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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~511~~ 1490 Call 345

THE CHICAGO DEPOSIT VAULT COMPANY, APPELLANT,

vs.

JOHN McNULTA, RECEIVER; THE WABASH WESTERN RAILWAY COMPANY, JAMES F. JOY, O. D. ASHLEY, THOMAS H. HUBBARD, EDGAR T. WELLES, AND THE WABASH RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 7, 1890.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1544.

THE CHICAGO DEPOSIT VAULT COMPANY, APPELLANT,

vs.

JOHN McNULTA, RECEIVER; THE WABASH WESTERN RAILWAY COMPANY, JAMES F. JOY, O. D. ASHLEY, THOMAS H. HUBBARD, EDGAR T. WELLES, AND THE WABASH RAILWAY COMPANY.

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INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Order appointing Thomas M. Cooley receiver, &c.	5	3
Report of receiver for January and February, 1887	12	7
Order appointing John McNulta receiver, &c.	14	8
Order referring accounts of receiver to master	16	9
Report of T. M. Cooley from March 1st to April 4, 1887	16	9
Master's report on final account of T. M. Cooley	18	10
Order approving master's report	20	10
Receiver's report for May, 1887	22	12
June, 1887	24	12
July, 1887	25	13
August, 1887	26	14
September, 1887	27	14
October, 1887	28	15
November, 1887	29	16
December, 1887	30	16
January, 1888	32	17
February, 1888	34	18

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 16, 1891.

	Original.	Print.
Receiver's report for March, 1888	36	19
April, 1888	38	19
May, 1888	40	20
June, 1888	42	21
July, 1888	44	21
August, 1888	46	22
September, 1888	48	23
Order referring accounts of receiver to master	50	24
Receiver's report for October, 1888	50	24
November, 1888	52	25
December, 1888	54	25
Order referring accounts of receiver to master	56	26
Master's report on accounts of receiver	56	27
Receiver's report for February, 1889	59	28
March, 1889	61	29
April, 1889	63	29
May, 1889	65	30
Order turning over possession of railroad	67	31
Order approving master's report	70	32
Order granting leave to Chicago Deposit Vault Co. to file petition	71	32
Petition of Chicago Deposit Vault Co.	71	33
Exhibit A—Lease between Chicago Deposit Vault Co. and Cooley, receiver, &c., December 31, 1886	79	37
Exhibit B—Address of Receiver McNulta to the officers and employés of Wabash railway	90	44
Answer of John McNulta, receiver, *et al.*	92	45
Receiver's report for June, 1889	94	47
Order discharging receiver	96	47
Order granting leave to file amended petition	99	49
Amended petition	100	49
Master's report of testimony	106	52
Testimony of J. Foster Rhodes	107	52
W. K. Nixon	114	56
Irving W. Frink	125	63
Exhibit to master's report—Lease between C. D. V. Co. and Cooley, receiver, Dec. 31, 1886	130	66
Order on hearing and submission of cause	142	73
Opinion of court	143	73
Decree	144	74
Appeal bond	146	75
Certificate of clerk	148	75
Assignment of errors	149	76
Citation and proof of service of same	152	77

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Walter Q. Gresham, judge of the circuit court of the United States for the seventh judicial circuit, on Monday, the twenty-second day of September, in the July term of said court, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the one hundred and fifteenth year.

WM. H. BRADLEY, *Clerk.*

CHARLES H. BEERS *et al.*
vs.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.* } In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-fifth day of June, 1886, came the complainants, by their solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, their bill of complaint in said-entitled cause; which said bill is in the words and figures following, to wit:

2 Circuit Court of the United States, Northern District of Illinois.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

To the hon. judges of said court, in chancery sitting:

Your orator, Charles H. Beers, now and for some years last past an owner and holder of divers bonds issued by the Wabash, St. Louis and Pacific Railway Company and secured by the trust deed of July 1, 1880, conveying what is generally known as the Chicago Division of said road to Henry F. Spaulding and John T. Terry, as trustees, in his own right as such bondholder and also as duly authorized to represent a large number of bonds held by other persons, brings this bill of complaint in behalf of himself and all other bondholders of the same class who desire to become parties hereto and contribute to the expense of this litigation.

3 Forasmuch as your orator is without remedy except in a court of equity, he brings this bill of complaint and prays that the Wabash, St. Louis and Pacific Railway Company, the Central Trust Company, the Mercantile Trust Company, Henry F. Spaulding, and John T. Terry may be made defendants hereto, and be served with process to appear and answer the premises, but without oath, and that upon the hearing the court would ascertain and decree the amount of principal and interest due to your orator and all others in like relation upon the bonds and coupons secured by the said mortgage, and that said mortgage may be foreclosed; and

in the event that the sum so adjudged to be due is not paid by a short day to be named, then that the court will order that all the property described in said mortgage, including the depot grounds held in trust, and also the rights and terminal privileges secured by the leases from the Chicago & Western Indiana Railroad Company, and all the equipment, supplies, machinery, tools, appurtenances, and franchises thereto pertaining shall be sold under the order of court and the proceeds applied to the payment, ratably, of all the bonds and coupons issued and outstanding under said trust deed, and that on such sale, confirmation, and conveyance the said defendants and each and every of them, and all other persons and corporations claiming by, under, or through them, shall be forever barred and foreclosed of and from any equity of redemption in or to said mortgaged premises or any part thereof.

Pending the rendition of such decree, your orator prays that the court will forthwith appoint some disinterested and practical person
receiver of all the said mortgaged property, equipment, and
4 appurtenances, to hold and administer the same, and disburse
the revenues and income thereof under the orders of the court from time to time to be entered herein.

Your orator also prays for such other and further relief as may be necessary or proper to fully protect his equities and as the court may be competent to award in the premises.

CHARLES H. BEERS,
Complainant.

HENRY CRAWFORD, *Solicitor.*

STATE OF ILLINOIS, } ss:
Cook County, }

Charles H. Beers on oath says that he is the complainant in the above-entitled action and has read the foregoing bill of complaint, and that the matters therein set forth are true, as he verily believes.

CHARLES H. BEERS.

Subscribed and sworn to before me, a notary public in and for said county, this June 25, 1886.

Witness my hand official seal.

W. P. SHERMAN, [SEAL.]
Notary Public.

(Endorsed:) Filed June 25, 1886. Wm. H. Bradley, clerk.

5 Afterward, to wit, on the twenty-first day of December, in the December term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

CHARLES H. BEERS
vs.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.* } In Chancery.

It is ordered that the following order be this day entered as of the sixteenth day of December, 1886:

And now, to wit, on this sixteenth day of December, 1886, comes the above-entitled cause on to be heard upon the application of the complainant, in behalf of himself and all other bondholders secured by the first mortgage upon the Chicago Division of the Wabash, St. Louis and Pacific Railway Company, for the removal of Solon Humphreys and Thomas E. Tutt, present receivers of the property of said railroad company within the State of Illinois, and for the appointment in this cause of some fit person as receiver to take charge of the property and effects, real, personal, and mixed, of the said Wabash, St. Louis and Pacific Railway Company, fully set forth and described in the mortgage made and executed by the said corporation to Henry F. Spaulding and John T. Terry, as trustees, on July first, A. D. 1880, as recited in the bill; and it appearing to the judge of this court that the said Wabash, St. Louis and Pacific Railway Company and the parties necessary to be notified of this application have received due and timely notice of this motion:

Now, upon motion of Henry Crawford, for the complainant and certain other bondholders, petitioners, and after hearing
6 Wager Swayne and Thomas H. Hubbard, of counsel for the purchasing committee; Wells H. Blodgett, for Solon Humphreys and Thomas E. Tutt, receivers; John L. Thompson, of counsel for the trustees of said mortgage, and Charles M. Osborn, of counsel for the Chicago and Western Indiana Railroad Company, opposed to the said motion, and upon the said bill of complaint, the testimony taken by the complainants on stipulation, the affidavits read in opposition to the motion, and the petitions of the bondholders in aid of the motion, and due deliberation being had, it is hereby ordered, adjudged, and decreed that Solon Humphreys and Thomas E. Tutt, heretofore appointed receivers of the property of the Wabash, St. Louis and Pacific Railway Company within the State of Illinois by an order made and entered in the United States circuit court for the northern district of Illinois on the twenty-eighth day of May, 1884, in a cause brought by the said Wabash, St. Louis and Pacific Railway Company against the Central Trust Company and others be, and they are hereby, removed as receivers of the property of the said Wabash, St. Louis and Pacific Railway Company covered by the said mortgage of July first, 1880.

And it is further ordered, adjudged, and decreed that the prayer of the said bill of complaint of said Beers and of the petitions of bondholders for the appointment of a new receiver in this cause be, and the same is hereby, granted, and that Thomas M. Cooley, of Michigan, be, and he hereby is, appointed receiver of the said Wabash, St. Louis and Pacific Railway Company and all of its property, personal, real, and mixed, covered by and embraced in said mort-

gage, particularly set forth and described in the bill of complaint of said Beers and in the copies of the said mortgage annexed
7 thereto as an exhibit to the said bill of complaint, and the said receiver is hereby empowered and instructed to take possession of all of the said property described in said mortgage or appurtenant thereto, and to manage, control, and operate the railroad described in the said mortgage, preserve and protect all said property, and collect as far as possible all accounts, choses in action, and credits due to said company, acting in all things under the orders of this court; and the said receiver is hereby empowered, if necessary, to sue in his own name and to recover all the property, moneys, or earnings of said company covered by the said mortgage, whether real, personal, or mixed, and whether in possession or in action, and to retain and employ all necessary attorneys, counselors, agents, laborers, and servants, and to fix and alter the compensation of said necessary attorneys, counselors, agents, laborers, and servants for the due administration of his trust and the performance of his duties hereby imposed upon him, subject to the supervision of the court.

And the said receiver is hereby empowered and directed to defend all suits when, in his judgment, it shall be to the interests of said company or creditors of said company when said suit shall have been or may hereafter be brought against said company or about any property embraced within the terms of this order. Such receiver shall also have authority, subject to the supervision of the court, to make such repairs to said railway and property as are proper and necessary, in his judgment, for carrying on the business thereof, and also to make all contracts that may be necessary in carrying on the business of said railroad, subject to the supervision of this court.

The said receiver, before entering upon his duties, shall
8 give his bond, for the benefit of all whom it may concern, in the penal sum of twenty thousand dollars, conditioned for the faithful performance by said receiver of all his duties as such, and that he will in all things observe and perform the orders of this court now or hereafter to be made, with such sureties and in such form as shall be approved by the judge making this order.

It is further ordered that the said receiver, out of the income which shall come into his hands by the operation of said railroads or otherwise, proceed to make payments as follows:

1st. That he pay all current expenses incident to the creation or administration of his trust and to the operating of said railroad.

2d. That he pay all amounts now legally due or that shall hereafter become due for taxes on any of the property over which he is appointed receiver.

3d. That he pay all balances due or to become due to other railroads or transportation companies on balances growing out of the exchange of traffic with such railway accruing six months prior hereto.

4th. That the said receiver report to this court with all conve-

nient speed what properties he finds under lease to the Wabash, St. Louis and Pacific Railway Company as appurtenant to the Chicago Division thereof, or to Humphreys and Tutt, as receivers, with the particulars of said properties and of said leases and the names of the lessors, with the view that this court may direct said receiver with respect to the acceptance of the said leases and their terms or their abrogation, and that until the making of the said report and the instructions of the court thereon that the said receiver pay all rentals which may hereafter accrue upon all leased lines of said Wabash, St. Louis and Pacific Railway Company appurte-
9 nant to the said Chicago Division and the jurisdiction of this court, and for the use of all terminals or track facilities and all such rentals or installments as may fall due for the use of any portion of road or roads or terminal facilities of any other company or companies.

5th. That he pay all rentals to become due upon rolling stock heretofore sold to said railroad company and partially paid for and necessary for use in the operation of the road over which the said receiver is appointed, covered by the mortgage described in the bill herein and which come into the hands of the receiver under the operation of this order.

That the said receiver present his said bond to the judge making this order for approval, and that upon said presentation and approval of said bond said receiver is entitled and required to proceed at once with the performance of his duties. It is further ordered, adjudged, and decreed that all parties herein and the said Humphreys and Tutt, their agents, officers, and attorneys, upon being informed of this order and of the approval of said bond by the judge of this court, proceed to surrender forthwith to the receiver hereby appointed or his duly appointed agent or agents all the lines of said railroads embraced within the terms of this order, and all the property, real, personal, and mixed, including all rolling stock and equipment, choses in action, books, papers, and accounts of said Chicago Division of said Wabash, St. Louis and Pacific Railway Company in the possession of said receivers or that have been used or employed by them or that relate to the property that is the subject of this order, and said Humphreys and Tutt are permitted to
10 have such inspection and access to the said books, papers, and accounts turned over by them to the receiver hereby appointed as may be necessary to enable him to make and file the accounts they are hereby ordered to make and file.

It is further ordered, adjudged, and decreed that after discharging and making all the payments and outgoes required by the terms of this order that the said receiver retain any surplus that may remain in his hands, to be applicable to the payment of the past-due and matured interest coupons of the bondholders secured by mortgage upon the said railroad property in the due order of their priorities of lien as may be subsequently directed and ordered by this court; that the said receiver proceed with all convenient speed to make and file with the clerk of this court his inventory of all the property that may be taken possession of by him under the terms of

this order, and that he report to this court from time to time in this cause once in every month his doings under this decree, and that he and any of the parties to this cause may apply for instructions to this court when necessary.

It is further ordered, adjudged, and decreed that the said Humphreys and Tutt do forthwith proceed with all convenient speed, not later than sixty days from the date of the making of this order, to file with the clerk of this court, in the cause of the Central Trust Company against the Wabash, St. Louis and Pacific Railway Company, consolidated case, a just and true account of all their acts and doings as receivers aforesaid from the date of their appointment, including a just and true inventory of all the property, real, personal, and mixed, taken possession of by them as such re-
11 ceivers in the State of Illinois. The following is a more particular and detailed description of the property that is the subject of this order, over which the said receiver is hereby appointed and of which he is directed to take possession, to wit:

All the Chicago Division of said Wabash, St. Louis and Pacific railway, commencing at Effingham, in the county of Effingham, in the State of Illinois, and extending thence northwardly through the counties of Effingham, Shelby, Moultrie, Piatt, Champaign, McLean, Ford, and Livingston, to Streator, in the county of La Salle, in said State of Illinois, with a branch extension thereof from Effingham to Altamont, in the county of Effingham aforesaid, the said line of railroad being the same formerly belonging to the Chicago and Paducah Railroad Company and known as the Chicago and Paducah railway; also the railroad commencing at Strawn, in the county of Livingston, in said State of Illinois, and extending thence northeastwardly through the counties of Livingston, Kankakee, and Will to or near the city of Chicago, in the county of Cook, in said State of Illinois, and known as the Chicago and Strawn railway, including the right of way, road-bed, embankments, tracks, ties, bridges, culverts, depots and depot grounds, and superstructures of every kind or nature whatsoever, and all machine shops and machinery and tools therein, and all cars, engines, and other property pertaining to said lines of railroads; also all the rights, privileges, and franchises of the said party of the first part relating to the said lines of railroad, and the tolls, income, and earnings, rents, issues, and profits of the said railroads and every part thereof, with the said appurte-
nances, including all moneys, books, papers, accounts, or
12 choses in action in the hands of any and all agents, clerks, or officers of the present receivers and of all persons indebted to the said receivers or to the trust, intending hereby to direct and require the receiver hereby appointed to take into his possession, as the officer of this court, all and singular the railway property of every kind, real, personal, or mixed, whether in possession or in action, covered by said mortgage, and especially the right to run all trains, engines, and cars over and upon the tracks and into the depots and freight stations of the Chicago and Western Indiana Railroad Company, and enjoy all and singular the rights and privileges and leasehold estate formerly held and owned in said terminal

property in Chicago by the said Wabash, St. Louis and Pacific Railway Company by leases from the said Chicago and Western Indiana Railroad Company, and which leasehold and trackage rights and privileges have been hitherto possessed and enjoyed by the present receivers.

Afterward, to wit, on the eighteenth day of March, 1887, came Thomas M. Cooley, receiver, and filed in said clerk's office his report for the months of January and February, 1887, in said entitled cause; which said report is in the words and figures following, to wit:

13 Wabash Railway.

Thomas M. Cooley, receiver.

Receiver's Report of Receipts & Disbursements, January 1st to February 28, 1887.

Receipts.

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Disbursements.

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For account of operating expenses.

Rent of general offices---------- 1,750 00

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* * *

For surplus material.

* * *

For New York & Pacific Car Trust Ass'n.

* * *

For Chicago, Western Indiana R. R. sinking fund.

* * *

THOMAS M. COOLEY, *Receiver.*

Endorsed: Filed M'ch 18, 1887. Wm. H. Bradley, clerk.

14 Afterward, to wit, on the fourth day of April, in the adjourned March term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

CHARLES H. BEERS *et al.*
vs.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.* } In Chancery.

On this fourth day of April, A. D. 1887, come the parties to this cause, by their respective counsel, and comes also Thomas M. Cooley, heretofore appointed receiver herein, and presents to the court his resignation as such receiver; and thereupon it is by the court ordered, adjudged, and decreed that the resignation of said Thomas M. Cooley, as receiver herein, be, and it is hereby, accepted.

It is further ordered, adjudged, and decreed that John McNulta be, and he is hereby, appointed receiver herein as the successor of said Thomas M. Cooley; that said John McNulta give bond, for the benefit of all whom it may concern, with such sureties and in such form as shall be approved by the court, in the penal sum of twenty thousand dollars, conditioned for the faithful performance by him of all his duties as such receiver, in obedience to all orders of the court now made or hereafter to be made; that the said Thomas

15 M. Cooley turn over and surrender to said John McNulta all the property, effects, rights, privileges, and franchises of which the said Thomas M. Cooley is such receiver herein, and that said Thomas M. Cooley be thereupon relieved and discharged of his duties as receiver herein, except as to the settlement of his accounts.

It is further ordered, adjudged, and decreed that said John McNulta, as receiver herein, take immediate possession and control of all and singular the property, effects, rights, privileges, and franchises of which said Thomas M. Cooley is receiver herein, and that as such receiver he have all the rights and powers and be subject to all the duties and restrictions heretofore conferred and imposed upon the said Thomas M. Cooley as such receiver.

It is further ordered, adjudged, and decreed that said Thomas M. Cooley have thirty days from the date of this order for the settlement of his accounts as receiver herein, and that within said time he render a full and final account of his actings and doing as such receiver to the court.

16 Afterward, to wit, on the thirteenth day of April, in the adjourned March term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

CHARLES H. BEERS
vs.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.* } In Chancery.

In this cause the accounts of Thomas M. Cooley, receiver, for the months of January and February having been heretofore filed herein, and the accounts of said receiver from the first day of March, 1887, to the close of his receivership, on the fourth day of April, 1887, having been this day filed herein, it is ordered that the said accounts be, and they are hereby, referred to Henry W. Bishop, as master in chancery, to examine and report upon the same with all convenient speed.

On the same day, to wit, on the thirteenth day of April, 1887, came Thomas M. Cooley, receiver, and filed in said clerk's office his report from March first to April fourth, 1887, in said entitled cause; which said report is in the words and figures following, to wit:

17

Wabash Railway.

Thomas M. Cooley, receiver.

Receiver's Report of Receipts & Disbursements, March 1, to April 4, 1887, Inclusive.

Receipts.

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* * *

Disbursements.

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Operating expenses.

Rent of general offices 1,750 00

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Supplies & material.

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Miscellaneous disbursements.

* * *
* * *

T. M. COOLEY, *Receiver.*

Endorsed: Filed April 13, 1890. Wm. H. Bradley, clerk.

18 Afterward, to wit, on the tenth day of May, 1887, came Henry W. Bishop, one of the masters in chancery of said court, and filed in said clerk's office his report in said entitled cause; which said report is in the words and figures following, to wit:

Master's Report upon Final Account of Thomas M. Cooley, Receiver.

In the Circuit Court of the United States for the Northern District of Illinois.

CHARLES H. BEERS
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY. } In Chancery.

Master's report upon the final account of the receiver, Thomas M. Cooley.

To the Honorable W. Q. Gresham, judge, &c.:

I, Henry W. Bishop, master in chancery, to whom, by an order of the court entered in the above-entitled cause, the accounts of Thomas M. Cooley, receiver, filed March 18, A. D. 1887, April 13, A. D. 1887, were referred for examination & report, hereby report that in pursuance of said order, after having given notice to all the parties interested that a hearing for the purposes in said order expressed would be had before me on the twentieth day of April, A. D. 1887, at room No. 718, Rialto building, in the city of Chicago, being the room occupied by the auditor of the receiver—

I was on that day attended by General John L. Thompson, representing the defendant, and by Mr. Wm. G. Beale, representing the receiver, and by Mr. Morris Trumbull, auditor of the receiver, when said examination was begun, and subsequently, by adjourn-
19 ment, upon other days continued by me alone, counsel not appearing in connection with the oral examination by me of said auditor, until an adjournment was had to the ninth (9th) and tenth (10th) days of May instant, when I was again attended by the solicitors of the respective parties, and the written examination of the auditor and the general superintendent of said receiver was had and is herewith returned.

From the consideration of which testimony, so far as it relates to the receiver's account and the examination made by me, I find and report that said receiver's accounts are in all respects correct, and I respectfully recommend that a- order be entered confirming the same.

I herewith return all of the testimony taken before me upon this reference.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated Chicago, May 10th, 1887.

(Endorsed:) Filed May 10, 1887. Wm. H. Bradley, clerk.

20 Afterward, to wit, on the twenty-sixth day of May, in the adjourned May term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

CHARLES H. BEERS *et al.*
vs.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.* } In Chancery.

Henry W. Bishop, Esq., the master in chancery to whom, by an order of court hereinbefore entered in this cause, the accounts of Thomas M. Cooley, as receiver, filed March eighteenth and April thirteenth, 1887, respectively, were referred for examination and report, having filed herein his report upon said accounts, and all parties in interest being present respectively by counsel as follows, namely, Henry Crawford, Esq., Julien T. Davies, Esq., Messrs. Isham, Lincoln & Beale, Messrs. Williams & Thompson, Messrs. Foster & Thomson, H. S. Greene, Esq., Hugh Crea, Esq., George W. Smith, Esq., and William A. Starin, Esq., respectively, and said counsel waiving time for filing exceptions to said report, and said report thereupon coming on for consideration by the court, and no objection being made to said report by anybody, it is thereupon ordered and decreed by the court that the said master's re-
21 port recommending the approval of the accounts of the said Thomas M. Cooley, receiver, and the said receiver's accounts be, and they are hereby, approved and confirmed by the court.

And the said Thomas M. Cooley having heretofore turned over to John McNulta, his successor, as receiver, all the property and effects heretofore in his charge as receiver in this cause, and being now discharged, it is further ordered that the sureties upon the bond of Thomas M. Cooley, as receiver herein, be, and they are hereby, released and discharged from their liabilities as sureties upon said bond.

It is further ordered that the said Thomas M. Cooley be, and he is hereby, allowed the sum of six thousand dollars as compensation for his services as receiver of the railway property in his charge, and that John McNulta, the present receiver of said property, pay to said Thomas M. Cooley the unpaid balance, if any, of said compensation; said sum of six thousand dollars to be full compensation for services in all the cases in which said Thomas M. Cooley was such receiver of property of the said Wabash, St. Louis & Pacific Railway Company.

It is further ordered that this order be entered *nunc pro tunc* as of May 10th, 1887, and that Receiver McNulta pay the fees of said master, taxed at two hundred dollars, for making said examination and report.

22 Afterward, to wit, on the thirtieth day of December, 1887, came John McNulta, receiver, and filed in said clerk's office his reports for the months of May, June, July, August, September, October, and November, 1887, in said entitled cause; which said reports are in the words and figures following, to wit:

23 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipt & Disbursements, May 1 to May 31, 1887, Inclusive.

Receipts.

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* * *

Disbursements.

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Operating expenses.

Rent of general offices $875 00

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Supplies & material.

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* * *

Miscellaneous disbursements.

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* * *

JOHN McNULTA, *Receiver.*

Endorsed: Filed Dec. 30, 1887. Wm. H. Bradley, clerk.

24 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, June 1 to June 30, 1887, Inclusive.

Receipts.

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* * *
* * *

Disbursements.

* * *
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* * *
* * *

Operating expenses.

Rent of general offices $875 00

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* * *

Supplies & materials.

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* * *
* * *

JOHN McNULTA, *Receiver.*

Endorsed: Filed Dec. 30, 1887. Wm. H. Bradley, clerk.

25 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, July 1 *to July* 31, 1887, *Inclusive.*

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices $875 00

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Supplies & materials.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed Dec. 30, 1887. Wm. H. Bradley, clerk.

26 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements from Aug. 1 to Aug. 31, 1887, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices $875 00

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Supplies & materials.

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JNO. McNULTA, *Receiver.*

Endorsed: Filed Dec. 30, 1887. Wm. H. Bradley, clerk.

27 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, Sept. 1 to Sept. 30, 1887, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices $908 33

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Supplies & materials.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed Dec. 30, 1887. Wm. H. Bradley, clerk.

28 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, October 1st to October 31, 1887, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices $925 00

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Supplies & materials.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed. Wm. H. Bradley, clerk. Dec. 30, 1887.

29 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, November 1st to November 30, 1887, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices $925 00

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Supplies & materials.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed Dec'r 30, 1887. Wm. H. Bradley, clerk.

30 Afterward, to wit, on the twenty-fifth day of January, 1888, came John McNulta, receiver, and filed in said clerk's office his report for the month of December, 1887, in said entitled cause; which said report is in the words and figures following, to wit:

31 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, December 1 to Dec. 31, 1887, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices $925 00

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Supplies & materials.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed Jan'y 25, 1888. Wm. H. Bradley, clerk.

32 Afterward, to wit, on the twenty-eighth day of February, 1888, came John McNulta, receiver, and filed in said clerk's office his report for the month of January, 1888, in said entitled cause; which said report is in the words and figures following, to wit:

33 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, Jan'y 1, 1888, *to Jan'y* 31, 1888, *Inclusive.*

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices $925 00

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Supplies & materials.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed Feb. 28, 1888. Wm. H. Bradley, clerk.

34 Afterward, to wit, on the twenty-sixth day of March, 1888, came John McNulta, receiver, and filed in said clerk's office his report for the month of February, 1888, in said-entitled cause; which said report is in the words and figures following, to wit:

35 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, Feb'y 1 to Feb'y 29, 1888, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices $925 00

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Supplies & materials.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed M'ch 26, 1888. Wm. H. Bradley, clerk.

36 Afterward, to wit, on the twenty-sixth day of April, 1888, came John McNulta, receiver, and filed in said clerk's office his report for the month of March, 1888, in said-entitled cause; which said report is in the words and figures following, to wit:

37 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, M'ch 1 to M'ch 31, 1888, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices $925 00

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Supplies & materials.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed April 26, 1888. Wm. H. Bradley, clerk.

38 Afterward, to wit, on the twenty-third day of May, 1888, came John McNulta, receiver, and filed in said clerk's office his report for the month of April, 1888, in said entitled cause; which said report is in the words and figures following, to wit:

39 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, April 1 to April 30, 1888, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices $925 00

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Supplies & materials.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed May 23, 1888. Wm. H. Bradley, clerk.

40 Afterward, to wit, on the twenty-first day of June, 1888, came John McNulta, receiver, and filed in said clerk's office his report for the month of May, 1888, in said entitled cause; which said report is in the words and figures following, to wit:

41 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, May 1 to May 31, 1888.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices $925 00

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Supplies & material.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed June 21, 1888. Wm. H. Bradley, clerk.

42 Afterward, to wit, on the nineteenth day of July, 1888, came John McNulta, receiver, and filed in said clerk's office his report for the month of June, 1888, in said entitled cause; which said report is in the words and figures following, to wit:

43 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, June 1 to June 30, 1888.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices $925 00

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Supplies & material.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed July 19, 1888. Wm. H. Bradley, clerk.

44 Afterward, to wit, on the twenty-first day of August, 1888, came John McNulta, receiver, and filed in said clerk's office his report for the month of July, 1888, in said entitled cause; which said report is in the words and figures following, to wit:

45 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, July 1 to July 31, 1888, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices $925 00

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Supplies & material.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed Aug. 21, 1888. Wm. H. Bradley, clerk.

46 Afterward, to wit, on the twenty-fifth day of September, 1888, came John McNulta, receiver, and filed in said clerk's office his report for the month of August, 1887, in said entitled cause; which said report is in the words and figures following, to wit:

47 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, August 1 to August 31, 1888, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices 925 00

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Supplies & material.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed Sept. 25, 1888. Wm. H. Bradley, clerk.

48 Afterward, to wit, on the sixteenth day of October, 1888, came John McNulta, receiver, and filed in said clerk's office his report for the month of September, 1888, in said entitled cause; which said report is in the words and figures following, to wit:

49 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, September 1st to September 30, 1888, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices---------- $925 00

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Supplies & material.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed Oct. 16, 1888. Wm. H. Bradley, clerk.

50 Afterward, to wit, on the nineteenth day of October, in the adjourned October term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

CHARLES H. BEERS *et al.*
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.* } In Chancery.

On motion of the solicitors for John McNulta, receiver in this cause, it is ordered that the monthly accounts of said receiver heretofore from time to time filed herein and covering the period from April fifth, A. D. 1887, to and including September thirtieth, A. D. 1888, be, and they are hereby, referred to Henry W. Bishop, Esq., one of the masters in chancery of this court, to examine the same, to take testimony thereon, if he shall be so advised or if parties in interest so desire, and to report upon said accounts with all convenient speed.

Afterward, to wit, on the first day of December, 1888, came John McNulta, receiver, and filed in said clerk's office his report for the month of October, 1888, in said entitled cause; which said report is in the words and figures following, to wit:

51 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, Oct. 1 to Oct. 31, 1888, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices ---------- 925 00

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Supplies & material.

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JNO. McNULTA, *Receiver.*

Endorsed: Filed Dec'r 1, 1888. Wm. H. Bradley, clerk.

52 Afterward, to wit, on the twenty-eighth day of December, 1888, came John McNulta, receiver, and filed in said clerk's office his report for the month of November, 1888, in said entitled cause; which said report is in the words and figures following to wit:

53 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, November 1 to November 30, 1888, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices $925 00

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Supplies & materials.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed December 28, 1888. Wm. H. Bradley, clerk.

54 Afterward, to wit, on the seventeenth day of January, 1889, came John McNulta, receiver, and filed in said clerk's office his report for the month of December, 1888, in said entitled cause; which said report is in the words and figures following, to wit:

55 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, December 1 to December 31, 1888, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices 1,025 00

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Supplies & material.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed Jan'y 17, 1889. Wm. H. Bradley, clerk.

56 Afterward, to wit, on the thirty-first day of January, 1889, in the December term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

CHARLES H. BEERS
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.* } In Chancery.

On motion of the solicitors for John McNulta, receiver in this cause, it is ordered that the monthly accounts of said receiver, from time to time filed herein, covering the period from October first, 1888, to and including December thirty-first, 1888, be, and they are hereby, referred to Henry W. Bishop, Esq., one of the masters in chancery of this court, to examine the same, to take testimony thereon, if he shall be so advised or if parties in interest so desire, and to report upon said accounts with all convenient despatch, in connection with the report to be made by him under a previous order of this court referring to said master for like action prior reports of said receiver.

Afterward, to wit, on the twenty-third day of March, 1889, came Henry W. Bishop, one of the masters in chancery of said court, and filed in said clerk's office his report in said entitled cause;
57 which said report is in the words and figures following, to wit:

Master's Report upon Receiver's Accounts from April 5, 1887, to December 31st, 1888, Inclusive.

In the Circuit Court of the United States for the Northern District of Illinois.

CHARLES H. BEERS *et al.*
vs.
WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.* } In Chancery.

Master's report.

To the Honorable Walter. Q. Gresham, judge, &c.:

I, Henry W. Bishop, master in chancery, to whom, by an order of the court entered in the above-entitled cause on the nineteenth (19th) day of October, A. D. 1888, and on the thirty-first (31st) day of January, A. D. 1889, the monthly accounts of General John McNulta, receiver in said cause, from time to time filed therein, and covering the period from the fifth (5th) day of April, A. D. 1887, to and including the thirty-first (31st) day of December, A. D. 1888, were referred to examine the same and to take testimony thereon if he should be so advised and the parties in interest so desired, and to report upon said accounts, hereby report that having given notice to the parties interested that a hearing for the purposes in said orders expressed would be had before me and said examination made by me at room No. 718, in the Rialto building, in the city of Chicago, Illinois, being the office of the auditor of said defendant, railway company, at the hour of eleven o'clock in the forenoon, on
58 Thursday, the seventh (7th) day of February, A. D. 1889, and that said examination and hearing would be continued from day to day, with such adjournments as might be necessary, until completed, I did, in pursuance of said notice, commence the examination of said accounts at said place at the time indicated in said notice, continuing the same from day to day up to and including the eighteenth day of March instant, said examinations extending over a period of actual services and adjournments of thirty-three days. Upon this examination I was attended by the said auditor, Mr. Morris Trumbull, and by Mr. J. S. Beck, chief clerk of the accounts, in whose presence and in connection with whose examination said investigation was made.

I have in this way carefully and thoroughly examined said accounts in every department and to the full extent of every subject to which they relate.

I therefore find and report that said accounts and reports are correct, and I respectfully recommend that an order be entered herein confirming the same.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated Chicago, March 23rd, 1889.

(Endorsed:) Filed M'ch 23, 1889. Wm. H. Bradley, clerk.

59 Afterward, to wit, on the twenty-eighth day of March, 1889, came John McNulta, receiver, and filed in said clerk's office his report for the month of February, 1889, in said entitled cause; which said report is in the words and figures following, to wit:

60 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, February 1 to February 28, 1889, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices 975 00

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Supplies & materials.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed March 28, 1889. Wm. H. Bradley, clerk.

61 Afterward, to wit, on the eighteenth day of April, 1889, came John McNulta, receiver, and filed in said clerk's office his report for the month of March, 1889, in said entitled cause; which said report is in the words and figures following, to wit:

62 Wabash Railway.

John McNulta, rec'r.

Receiver's Report of Receipts & Disbursements, March 1, to March 31, 1889, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices---------- 975 00

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Supplies & material.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed April 18, 1889. Wm. H. Bradley, clerk.

63 Afterward, to wit, on the first day of June, 1889, came John McNulta, receiver, and filed in said clerk's office his report for the month of April, 1889, in said entitled cause; which said report is in the words and figures following, to wit:

64 Wabash Railway.

John McNulta, ——.

Receiver's Report of Receipts & Disbursements, April 1 to April 30, 1889, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices $975 00

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Supplies & materials.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed June 1, 1889. Wm. H. Bradley, clerk.

65 Afterward, to wit, on the nineteenth day of June, 1889, came John McNulta, receiver, and filed in said clerk's office his report for the month of May, 1889, in said entitled cause; which said report is in the words and figures following, to wit:

66 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, May 1 to May 31, 1889, Inclusive.

Receipts.

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Disbursements.

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Operating expenses.

Rent of general offices $975 00

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Supplies & materials.

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JOHN McNULTA, *Receiver.*

Endorsed: Filed June 19, 1889. Wm. H. Bradley, clerk.

67 Afterward, to wit, on the twentieth day of June, in the adjourned May term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

CHARLES H. BEERS *et al.*
vs.
WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.* } In Chancery.

Come now James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, the purchasing committee hereinafter mentioned, and make application for the possession of the railway property in the possession of John McNulta, as receiver in this cause; and it appearing to the court that under decrees of foreclosure made by the circuit court of the United States for the southern district of Illinois in causes therein pending all the railway a*b*d other property of every kind and nature of which the said John McNulta is receiver in this cause was heretofore sold to the said James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edger T. Welles as a purchasing committee for certain bondholders and stockholders of the Wabash, St. Louis and Pacific Railway Company, and that all said railway and other property has been duly conveyed to said purchasers under and pursuant to the terms of said decrees, it is thereupon ordered that the above-mentioned application of said purchasers be granted, and that the said receiver, John McNulta, on the first day of July, A. D. 1889, or as soon thereafter as said purchasers shall desire, surrender, turn over, and deliver to said James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles,
68 purchasers as aforesaid, the railway commonly known as the Chicago Division of the railway formerly belonging to the Wabash, St. Louis and Pacific Railway Company, and also all equipment pertaining thereto, whether acquired by said railway company or by receivers of this court, and also the property commonly known as the Chicago terminals of the Wabash, St. Louis and Pacific railway (including all leasehold rights and all property leased from the Chicago and Western Indiana Railroad Company), and also all other property of every kind and nature of which the said John McNulta is in possession, charge, or control as receiver in this cause; but this order is made, and the surrender and delivery of possession by the receiver as above ordered shall also be made, subject in all respects to the terms of the decrees of sale hereinbefore mentioned and to the orders confirmatory thereof, and subject also to the power and right of this court to consider and determine all questions which have heretofore arisen or shall hereafter arise herein concerning expenses of this cause or of the receivership herein, concerning claims against the said receiver or against any of the property now in his possession as receiver, and concerning allowances to counsel or to parties, and to charge upon or against said property any amounts at any time deemed by this court proper to be charged upon it, and this court hereby reserves full power and right to con-

sider and determine all such questions, to make any charges which it deems proper against said property now in the possession of said receiver, notwithstanding the surrender thereof, and to resume possession of all or any of said property, if necessary, at any time hereafter, and to place said property again in the possession of a receiver, and to resell or otherwise dispose of the same for the purpose of securing compliance with any orders which it shall make in this cause.

69 It is further ordered that said receiver proceed to close up the affairs of the receivership herein, and to present to the court his accounts thereof with all convenient despatch.

70 Afterward, to wit, on the twenty-fourth day of June, in the adjourned May term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

CHARLES H. BEERS *et al.*
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.* } In Chancery.

On motion of Messrs. Isham, Lincoln & Beale, solicitors for John McNulta, receiver herein, it is ordered that the report of Henry W. Bishop, Esquire, master in chancery of this court, filed herein on the twenty-third day of March, A. D. 1889, recommending the approval of the accounts of said receiver, covering a period from the fifth day of April, A. D. 1887, to and including the thirty-first day of December, A. D. 1888, theretofore referred to said master, be, and said master's report and said receiver's accounts are hereby, approved and confirmed by the court, it appearing that no exceptions or objections have been made or filed thereto by any party to this case; and by agreement of all counsel interested it is further ordered that the sum of one thousand dollars ($1,000) be paid by said receiver to said Henry W. Bishop, master in chancery, in full for his services in examining and reporting upon said receiver's accounts.

71 Afterward, to wit, on the twenty-ninth day of June, in the adjourned May term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

CHARLES H. BEERS *et al.*
vs.
WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.* } In Chancery.

On motion of the Chicago Deposit Vault Company, by Paddock and Wright, its solicitors, leave is given it to file its petition herein,

which is done, and the respondents named in said petition are ruled to answer the same within thirty days.

On the same day, to wit, on the twenty-ninth day of June, 1889, came the Chicago Deposit Vault Company, by its solicitors, and filed in said clerk's office its intervening petition in said entitled cause; which said petition is in the words and figures following, to wit:

72 In the Circuit Court of the United States for the Northern District of Illinois. June Term, 1889.

CHARLES H. BEERS
vs.
WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY.

The petition of the Chicago Deposit Vault Company, a corporation organized and doing business under the laws of the State of Illinois.

To the honorable the judges of said court, in chancery sitting:

Your petitioner, The Chicago Deposit Vault Company, respectfully shows that on the 31st of December, 1886, your petitioner, at the request of Thomas M. Cooley, receiver of The Wabash, St. Louis and Pacific Railroad Company, defendant in the above-entitled cause, sometimes called the Wabash Railway Company, executed to the said receiver a certain indenture of lease, bearing date on that day, under the corporate seal of your petitioner, and signed by the said Wabash Railway Company, by said T. M. Cooley, receiver (a copy whereof is hereto annexed, marked Exhibit "A," and made part hereof), whereby your petitioner, in consideration of the covenants and agreements of the said receiver therein contained on the part of himself, his successors and assigns, granted, demised, and leased to the said receiver, his successors and assigns, all those certain
73 rooms in the building of your petitioner, fronting on Van Buren street, in the city of Chicago, known as the Rialto building, described as rooms 523 to 547, inclusive, on the fifth floor of said building; also the west half of the south wing on the seventh floor thereof, the said premises to be occupied by the said Thomas M. Cooley, receiver, for the uses and purposes of a general railroad office and for no other purposes; to have and to hold to the said receiver therein named, as party of the second part, his successors and assigns, from the first day of January next following the date of said lease—that is to say, from January 1st, 1887—for the full term of four years and four months then next ensuing, viz., until April 30, 1891, upon a yearly rental, payable to your petitioner, its successors and assigns, of $10,500, in equal monthly portions of $875 on the first day of each month in said term, the first monthly payment to be made January 1st, 1887, said rent to be paid at the office of your petitioner or its agent, in said city of Chicago.

And your petitioner shows that the said lessee, for himself, his successors and assigns, by said lease expressly covenanted with your

petitioner, its successors and assigns, that he would during said term or any portion thereof pay unto your petitioner the said yearly rental.

And your petitioner shows that it was represented to your petitioner by the said lessee at and before the execution of said lease that the said premises were to be used in and about the business of the said receiver, his successors and assigns, in the operation of the various lines of railway then in the possession of the said receiver under the order and direction of this court and were appropriate and necessary to the said receiver for such purpose; and
74 your petitioner shows that the said receiver then and there had authority to take said lease and enter into the covenants therein contained with your petitioner, and that the said premises, ever since the beginning of said term down to the present time, have been and still are in the actual occupancy and use as general railroad offices of said Wabash Railroad Company and of said receiver or his successor in office, the present receiver, John McNulta, who have thus far paid the rents covenanted therein to your petitioner and in all other respects performed the covenants therein contained.

And your petitioner shows that the said lease is in force between the parties thereto; that your petitioner has always complied with the covenants on its part therein contained, and is ready and willing to continue such compliance to the end of the said term, and until the receipt of the notice hereinafter mentioned was fully relying upon like compliance by the said lessee, his successors and assigns.

Your petitioner shows that the said receiver, as petitioner is informed and believes, has recently given a notice to the officers and employés under his control as such receiver, stating that at twelve o'clock midnight June 30th, 1889, under and pursuant to the orders of this and other courts, the Wabash railway and its appurtenances, including all the railway property embraced within his receivership, will be turned over to James F. Joy, O. D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, the purchasing committee representing the Wabash Western Railway Company, as will appear by a printed notice, a copy whereof or of portions whereof is hereto attached, marked Exhibit "B," and made a part hereof.

And your petitioner shows that on the 27th day of June, 1889, your petitioner received a notice in writing, under the hand
75 of said John McNulta, as receiver in said cause, in the words and figures following:

"To the Chicago Deposit Vault Company, Chicago, Illinois:

I hereby respectfully notify you, as I have already heretofore verbally notified you, that from and after the first day of August next I shall not need the rooms in the Rialto building, being numbers 523 to 547, inclusive, on the fifth floor and the west half of the south wing on the seventh floor, now occupied as Wabash railway offices by me as receiver, and I shall cease to use said offices and shall surrender possession thereof to you on the 31st day of July next. No rental for said offices or any of them will be paid by me

after that date, but the rental for July will be paid in the usual course of payment.

JOHN McNULTA,

As Receiver of Railway Property Formerly Belonging to the Wabash, St. Louis and Pacific Railway Company and Now Called for Convenience the 'Wabash Railway.'"

And your petitioner verily fears that, unless otherwise controlled or directed by the order of this court, the said receiver will turn over and surrender all the -roperty now in his hands as such receiver to the Wabash Western Railway Company, to whom or to whose purchasing committee it has been recently sold under the order of this court, and that said receiver and the said Wabash Western Railway Company will effect such turning over and
76 surrender of said assets on or before July 1st, 1889, or at some other early day, upon the basis claimed and pretended in said notice to your petitioner that your petitioner's said lease had been or was about to be terminated according to said notice, and that your petitioner had been deprived of all right to rentals under said lease from the date of such pr-tended surrender.

And your petitioner also fears that if your petitioner should remain silent under the notice of said McNulta, and not intervene in this court by petition for relief, your petitioner's rights will be seriously prejudiced, and that said receiver and the other respondents to this petition will claim and pretend that your petitioner had assented to the surrender of said lease, and that said receiver had delivered said property and assets free of all claim of your petitioner for rent beyond the 31st of July next.

Your petitioner shows that the said claim of a right to surrender said lease and to repudiate further obligation thereunder is unjust and inequitable and not warranted by any provision or stipulation of the said lease; that, as will appear by the said lease, the said lessee therein reserved a right of surrender and cancellation on May 1st, 1888, upon the precedent condition that he or his successors should give notice in writing to petitioner to that effect on or before Feb--uary 1st, 1888, which notice was never given nor was said right of cancellation ever exercised or claimed, so that the said lease ever since its date has remained and now is absolute to the full end of said term of years thereby granted.

Your petitioner further shows that if the said receiver is permitted by this court to surrender and repudiate said lease according to the aforesaid notice a serious pecuniary loss will be caused to
77 your petitioner, owing to the fact that the said premises cannot at this season be relet, and that the same will certainly remain vacant for a considerable length of time and possibly to the full end of said term; that, in order to prepare said premises for the occupancy and use stipulated in said lease, your petitioner was put to great expense, which will be largely lost upon a reletting of the same in the ordinary course of business; that in the event the said receiver is allowed by said court to surrender said lease your petitioner will lose the rents to accrue thereunder, amounting to

$18,375, less any amount to be obtained from a reletting of the same, which amount is wholly uncertain and contingent.

Your petitioner therefore submits that the said rents accruing under said lease are a valid, equitable, and legal claim and demanupon the assets so to be delivered to the said Wabash Western Railway Company and should be payable out of such assets before the discharge of said receiver and before the said Wabash Western Railway Company should be al-owed by this court to receive possession of said assets, or that in some form your petitioner's rights under said lease should be protected by the order of this court in that behalf.

Your petitioner therefore prays that the said receiver, John McNulta, the said Wabash Western Railway Company, and said purchasing committee, James F. Joy, O. S. Ashley, Thomas H. Hubbard, and Edgar T. Welles, be required by rule to answer forthwith this petition, but without oath, and that upon a hearing herein an order be entered rescinding said notice of cancellation and requiring the said receiver and the said Wabash Western Railway Company to abide by and pefform the said lease; that an adequate fund
78 out of said assets be retained in said court to assure the payments of the rents hereafter to accrue under said lease, and that said receiver be directed out of said fund to pay the rents as t-ey shall accrue, or that in some other manner, to be determined by the court, the payment of the rentals aforesaid by said receiver be secured, and that in the meantime the court enter its order directing the said receiver to retain the said assets and property in his hands, or a suitable proportion thereof, undelivered until the further order of the court; and for above and such other and better relief as to equity may appertain your petitioner does and will ever pray, &c.

THE CHICAGO DEPOSIT VAULT COMPANY,
By EUGENE CARY.
PADDOCK & WRIGHT, *Sol'rs.*

GEO. L. PADDOCK, *Of Counsel.*

STATE OF ILLINOIS, } ss:
County of Cook, }

Eugene Cary, being duly sworn, says that he is vice-president of said petitioner, and that the matters and things in the foregoing petition are true, and that W. K. Nixon, the president of said company, is now out of the State.

EUGENE CARY.

Subscribed and sworn to before me this 29th day of June, 1889.

SAMUEL H. WRIGHT,
[SEAL.] *Notary Public.*

79 EXHIBIT A.

Lease.

This indenture, made this 31st day of December, in the year of our Lord eighteen hundred and eighty-six, between the Chicago Deposit Vault Company, of Chicago, in the county of Cook, in the State of Illinois, party of the first part, and Thomas M. Cooley, receiver of the Wabash, St. Louis and Pacific Railroad Company, of the city of Chicago, in the county of Cook, in the State of Illinois, party of the second part, witnesseth: Parties.

That the said Chicago Deposit Vault Company, in consideration of the covenants and agreements herein contained on the part of the said party of the second part, his successors and assigns, to be kept and performed, doth by these presents grant, demise, and lease unto the said party of the second part, his successors and assigns (such assigns being with the license hereinafter mentioned), those certain rooms in the building known as the Rialto building, situate at Nos. 135 to 153, inclusive, Van Buren street, in said Chicago, to wit, rooms Nos. 523 to 547, inclusive, on the fifth, and west half of the south wing on the seventh, floor of said building, said premises to be occupied by said Thomas M. Cooley, receiver, for the uses and purposes of a general railroad office and for no other purposes; to have and to hold the premises hereby demised, with the rights, easements, and appurtenances thereto belonging, unto the said party of the second part, his successors and assigns (such assigns being with the license hereinafter mentioned), from the first day of January now next, including said day, during the full term of four years and four months thence next ensuing, viz., until the thirtieth day of April, A. D. 1891, yielding and paying therefor during the said term (except only in case of fire or other casualty, as hereinafter mentioned) as follows, to wit: Unto the said Chicago Deposit Vault Company, its successors and assigns, the yearly rent or sum of ten thousand and five hundred dollars ($10,500), such yearly rent to be payable monthly, in advance, in equal portions, to wit, eight hundred and seventy-five — ($875) on the first day of each month in said term, the first monthly payment to be made on the first day of January now next; and the said rent shall be

Description of premises.

Term.

Rent reserved.

80

Place of payment.

paid at the office of the said Chicago Deposit Vault Company or its agent, in Chicago.

It is expressly understood and agreed by and between the parties hereto that it shall not be necessary in any event for the lessor or its agent, successor, or assigns to go elsewhere than at the place above specified for the payment of the same.

Lessor to furnish water and steam-heating.

And the said lessor agrees to pay the water rates and to furnish, at its own expense, the steam for the steam-heating apparatus in said premises when necessary from October to May, both inclusive, from seven o'clock a. m. to six o'clock p. m. (Sundays and legal holidays excepted), but it shall not be liable for damages for unavoidable delay in so doing.

And the said lessee, for himself, his successors and assigns, hereby covenants and agrees with the said Chicago Deposit Vault Company, its successors and assigns, that the said lessee, his
81 executors, administrators, and assigns, will, during the said term or any portion thereof and for such times as he or any person claiming under him shall hold the said premises or any part thereof, pay unto it the said yearly rental as aforesaid, except only in case of fire or other casualty, as hereinafter mentioned, and also will keep all and singular the said premises in such repair as the same are in at the commencement of said term or may be put in by the lessor or its representatives during the continuance thereof, reasonable use and wearing thereof and damage by accidental fire or other inevitable accidents excepted.

Les-e- to restore premises in good repair.

And the said lessee, for himself, his successors and assigns, hereby covenants and agrees with the said Chicago Deposit Vault Company, its successors and assigns, to restore the premises to the lessor with the glass, of like quality in the several windows thereof, entire and unbroken, and will not allow any waste of the water or misu-e or neglect of the water fixtures or steam-heating apparatus on the premises, and that he will pay all damages to the demised premises caused thereby, and will indemnify and save harmless the lessor, its successors or assigns, from all claims for damage done to any goods, merchandise, or personal property by such water or by such misu-e or neglect, and that all personal property in the demised premises shall be at the risk of the lessee only, and, if the whole or any part thereof shall be destroyed or damaged by fire, water, or otherwise, or by the leakage or bursting of water pipes, or by

Lessee's property on premises at his own risk.

the steam-heating apparatus, or in any other way or manner, no part of said loss or damage is to be charged to or be borne by the lessor, its successors or assigns, in any case whatever; and,

82 further, that he or others having his estate in the premises will not assign this lease or underlet the whole or any part of the said premises nor permit any other person to have desk room in or occupy the same without the written assent of the said Chicago Deposit Vault Company, its successors or assigns, first had and obtained therefor, and that no express or implied assent by the party of the first part to the assignment of this lease or to the underletting of any part of said premises shall be deemed or taken to authorize any subsequent or other assignment or subletting, but written assent, as aforesaid, shall be essential in each separate case of proposed assignment or subletting, but such assent shall not be withheld when the proposed subtenant and his business are unobjectionable.

In regard to assignment or subletting.

And it is further expressly understood and agreed between the said parties that in case the said party of the second part shall abandon said premises or any part thereof during the continuance of said term the said party of the first part may, at *his* option, without notice, and either in its own name or as the agent of the said party of the second part, relet said premises or any part thereof on such terms and for such rent as it may deem expedient or proper, and such reletting shall not operate as a waiver of any right whatever which the said party of the first part would otherwise have to hold the said party of the second part responsible for the rent above reserved; and in case said premises or any part thereof shall be relet, as aforesaid, the said party of the first part shall collect the rent therefor from the person or persons to whom the same shall be relet, and, after paying the expenses of such reletting and collection, apply what remains of the amount received by it on account of the rent due or

83 to become due from the said party of the second part under this lease.

Covenants as to locks, keys, vault combinations, signs, moving of heavy articles, use of premises, employment of janitor, and rules of the building.

And, further, that no steam engine or boiler shall be put on the premises and no alterations or additions shall be made during the term aforesaid in or to the same; that no additional lock shall be put upon any door of said rooms without the consent of the lessor being first obtained in writing allowing the same, and any and all locks

placed on any door shall remain to the benefit of the lessor, and that he will, at the termination of his estate in the premises, return all keys of said rooms and of the water-closets, and will give to the lessor or its agent the explanation to the combination of all locks on the doors of the vaults, and will not permit any duplicate keys to be made—the lessor to furnish all necessary keys—and that he, the said lessee, his successors and assigns, will not injure, overload, or deface the said building or permit the same or any part thereof to be injured, defaced, or overloaded, and that he will not at any time during the said term permit or suffer to be used, exercised, or carried on in or upon said premises any nuisance, noxious, noisy, or offensive trade or business, or occupy or use said premises or permit said premises to be occupied or used at night or as a lodging or for any immoral or any illegal purpose, and that it shall be lawful for the said lessor or its agent at all times to enter or send its agent, mechanics, or servants into and upon the same to examine the condition thereof and to examine, maintain, repair, or protect any and all things pertaining to said premises, and that no signs shall be attached to said building by drilling into the stone
84 or iron-work or by fastening into the joints of the same, and that no signs shall be put up, fastened, or painted upon said building or in the halls, stairways, or entrances or on the sidewalk (except opposite the respective numbers on the bulletin boards provided for that purpose, or on the glass in the doors and the glass of the windows of said demised premises), without the consent of the first party being first obtained in writing, and all signs shall be made in gold or silver leaf lettering, and both in size, style of lettering, and material, under written instructions of the lessor or its agent, and shall first be approved by the party of the first part before being put up, and that the said party of the second part will not suffer any rubbish, ashes, dirt, or filth to be thrown into the halls, courts, areas, or privies of said building, or out of the windows nor into the street in front of said building, and no dirt, ashes, stoves, or furniture, or other article shall be left in the halls of said building, and that in care of said rooms no person other than the janitor of the building or his assistant shall be employed, to be paid by the lessee; that all safes, furniture, boxes, or other bulky articles for said room shall be car-

ried up the stairs of said building before nine o'clock a. m. or after five o'clock p. m., and that the said lessee will pay all damages to said premises, stair-cases, or halls caused by any such moving of heavy or bulky articles as aforesaid, and that during said term he will conform to all reasonable regulations made by the lessor, its successors or assigns, for the government of the said building, and that the lessor or its representative may place on the front of said premises a notice, "For rent," for three months prior to the termination of this lease, and that the janitor of said building shall at all times keep a pass-key and be allowed admittance to said rooms. It
85 is understood and agreed between the parties hereto that this lease may be cancelled on May 1st, 1888, by the said party of the second part upon *he* or his successors giving notice in writing to that effect on or before Feb'y 1st, 1888.

Covenants against use of stoves, kerosene, etc.

And, further, that he or others having his estate in the premises will not use burning fluid, camphene, alcohol, kerosene, or anything except gas or electricity, in lighting said premises, and will not put up or use any stove without the consent of the lessor, and that all stoves used in said demised premises shall be placed on a zinc platform or plate of zinc at least three feet square, and when any stove shall be placed nearer any wood-work than three feet such wood-work shall be cased with zinc at least three and a half feet high and three feet wide, and that he will not invalidate any policies of insurance now or hereafter made on said building, and that he will pay all extra insurance on said building, if any is required, on account of extra risk in the use of the demised premises.

Extra insurance risk.

Covenants to surrender peaceable possession and in good repair.

It is further agreed that the lessee and his successors and assigns shall and will, at the expiration of said term or other termination of the lessee estate in the premises, peaceably yield and give up unto the said lessor or its successors or assigns all and singular the premises and all fixtures and future erections and additions to or
86 upon the same in good, tenantable repair in all respects, reasonable wearing and use thereof and damage by fire or other inevitable accidents excepted:

Covenants as to re-entry and termination of lessee's interest by fire, etc.

Provided always, and these presents are upon this condition, that if the lessee or his representatives or assigns do or shall neglect or fail to perform and observe any or either of the covenants

hereinbefore contained which on his part are to be performed the said lessor, its successors or assigns, lawfully may, immediately or at any time thereafter and whilst such neglect or default continues, and without further notice or demand, enter into or upon said premises and repossess the same as of its former estate and expel the said lessee and those claiming under him and remove his effects (forcibly, if necessary) without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant; and if, by virtue of any statute or statutes for the relief of insolvent debtors and the more equal distribution of their effects or by virtue of any act to establish a uniform system of bankruptcy throughout the United States or of any insolvent law or bankrupt law, a warrant shall be issued against the estate or estates of the lessee or of those having estate in the premises (either upon his petition or upon that of any creditor); or if he shall become insolvent or shall make an assignment for the benefit of his creditors, or if the term named in this lease shall be attached or
87 taken on execution, the lessor, its successors or assigns, may in like manner enter and repossess the premises and expel the lessee and those claiming under him and remove his effects; and in any case in which such entry, expulsion, and removal are lawful under the provisions above set forth, such entry upon the premises or upon any part thereof in the name of the whole (with or without such expulsion or removal) shall determine this lease; and provided also that in case the premises or any part thereof shall, during said term, be destroyed or damaged by fire or other casualty so that the same shall thereby be rendered unfit for use or habitation, then and in such case the lessor, its successors or assigns, may at any time within sixty days after the happening of such casualty, by notice in writing to the lessee or those having his estate in the premises, determine this lease, and unless it be so determined the rent hereinbefore reserved or a just and proportional part thereof, according to the nature and extent of the injury sustained, shall be suspended or abated until the said premises shall have been by the said lessor put in proper condition for use and habitation; but in any event the rent shall be paid up to and including the day of said fire or casualty.

88 And the said party of the second part hereby makes, constitutes, and appoints any attorney of any court of record to be his true and lawful attorney, irrevocably, for him and in his name, place, and stead to enter appearance in any court of record or before any justice of the peace at any time after any rent is due upon this lease or after this lease is determined, by default or otherwise; to waive process and service thereof and trial by jury or otherwise, and confess a judgment of guilty of forcible detainer of the above-demised premises or any part thereof and for costs of suit in favor of said Chicago Deposit Vault Company, its successors and assigns, and to release all errors that may occur or intervene in such proceeding, and particularly in the waiving of process and service thereof and trial by jury or otherwise and in the entering up of said judgment and the issuing of the writ of restitution thereon, and to stipulate that no writ of error or appeal shall be prosecuted from the said judgment, nor any bill in equity filed, nor any proceeding of any kind taken, in law or equity, to interfere in any manner with the operation of said judgment or the writ of restitution issued thereon, and to consent that a writ of restitution may be immediately issued upon said judgment.

Confession of judgment in forcible entry and detainer.

And it is further covenanted by and between the parties that the party of the second part shall pay and discharge all costs and attorneys' fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part, *his* heirs or assigns.

Lessee covenants to pay attorneys' fees.

In witness whereof the said parties of the
89 first and second parts have hereunto interchangeably set their hands and seals the day and year first above written.

THE CHICAGO DEPOSIT VAULT CO.,
By W. K. NIXON, *President.*
THE WABASH RAILWAY CO., [SEAL.]
By T. M. COOLEY, [SEAL.]
Receiver.

J. FOSTER RHODES, *Secretary.*

90 EXHIBIT B.

A Napoleonic Manifesto.

Gen. McNulta, receiver of the Wabash railway, yesterday issued the following pronunciamento and valedictory to officers and employés of the road:

"The Wabash railway and its appurtenances, including all of the railway property embraced within this receivership, will be turned over and delivered to James F. Joy, O. D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, the purchasing committee, at 12 o'clock midnight June 30, under and pursuant to the orders of the several circuit courts of the United States for the northern and southern districts of Illinois, the district of Indiana, and the northern district of Ohio, western division.

"You are therefore directed from and after the time named to hold all such property in your possession or under your control subject to the orders of the Wabash Western Railway Company, which has been authorized by said purchasing committee to receive and operate the same until further notice by proper authority. All business transacted prior to the hour of delivery, including all tickets sold, freight billed or in transit, will be accounted for to the receivership as heretofore, and all business done after such hour, including tickets sold and freight billed, will be accounted for to the Wabash Western Railway Company, as agent of said purchasing committee.

"In severing my connection with the management of the road my thanks are due and are hereby tendered to each and all of you for your honest, faithful, and efficient services. In the two years and three months we have served together, through one of the most critical periods in the railroad history of the country, during
91 rate war, strike, and boycott, or when pulling on an even keel with our competitors, you have always been equal to the occasion; at all times you have intelligently, harmoniously, and enthusiastically put forth your best effort for the success of the Wabash.

"Now, when the reasons that caused me to be called by the order of the court to the management of the property have ceased to exist and I am about to sever my connection with it, in the sadness of my separation from men to whom I have become strongly attached it is pleasant to me and will, I am sure, be gratifying to you to know that the patrons and the owners of the road alike, without a dissenting voice, commend your work and express their satisfaction with the result, which is freely conceded to be so great a success that it has no parallel. This success and the credit for it is wholly yours. The part you have taken in securing it will stand as a strong recommendation for you, wherever you may be hereafter. It is a practical demonstration of what can be done where many hands, prompted by willing hearts and guided by clear heads, unite, determined to work harmoniously in the accomplishment of a good result. On this result and for this result I congratulate you and I thank you.

I earnestly hope and, knowing you as I do, I firmly believe, you

will continue to put forth your best efforts to secure another and, if possible, a greater success for the incoming management, which I cordially commend to you, and for yourselves that you will continue to stand by the motto 'The Wabash keeps up with the procession,' and that hereafter, as now, the road shall be known as 'The Great Wabash' and its force as the best and most harmonious in the whole country."

(Endorsed:) Interstate commission hearing. Filed June 29, 1889. Wm. H. Bradley, clerk.

92 Afterward, to wit, on the ninth day of July, 1889, came John McNulta, receiver, and others and filed in said clerk's office their answer to the intervening petition of the Chicago Deposit Vault Company in said entitled cause; which said answer is in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Illinois.

CHARLES H. BEERS
vs.
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY. } In Equity.

The answer of John McNulta, receiver of the Wabash Western Railway Company; James F. Joy, O. D. Ashley, Thomas H. Hubbard, and Edgar T. Welles to the intervening petition of the Chicago Deposit Vault Company.

These defendants, for answer to said intervening petition and to so much and such parts thereof as they are advised is material for them to make answer unto, answering, say:

They believe it to be true that on the 31st day of December, 1886, said intervenor executed to Thomas M. Cooley, receiver, a certain indenture of lease, as stated and charged in said intervening petition, and that said lease contains the covenants and stipulations therein set forth. Defendants admit that on the 27th day of June, 1889, John McNulta, the successor of said Cooley, gave notice in writing to said intervenor of his intention to vacate the premises described in said lease on the first day of August, 1889, as stated and set forth in said intervening petition.

And said defendants admit that on the first day of July, 1889, said John McNulta, receiver, did turn over all of said property to said Wabash Western Railway Company as agent of
93 said purchasing committee.

Defendants deny that the claim of right in said receiver to surrender said lease and to repudiate further obligation thereunder is unjust or inequitable, and defendants aver the fact to be that said premises were leased by said Cooley for the purpose of enabling him, as receiver, to carry on the business of operating the property of the Wabash, St. Louis & Pacific Railway Company, and

that on the 18th day of June, 1889, said John McNulta, receiver, who had become the successor of said Cooley, was ordered by the court to turn over the property which was the subject of said receivership to said purchasing committee, and that thereupon said McNulta, having no further use for said leased premises, gave the notice to said intervenor, as stated and charged in said intervening petition; and defendants aver the fact to be that said lease became terminated by the giving of said notice, notwithstanding the stipulation contained in said lease; and said defendants aver the fact to be that said Cooley had no power, without the approval of this honorable court, as intervenor well knew, to bind the court or the funds of said receivership for the payment of the rent reserved in said lease beyond the time that said premises should be necessary for the carrying on of the business of operating said property under said receivership; defendants aver that said contract of lease was made by said Cooley without the approval of this honorable court, and therefore defendants say that said contract is not binding upon these defendants, and they insist that to charge as a lien upon the funds or property of said receivership, the rents to accrue under the terms of said lease after the 31st day of July, 1889, and after the necessity for the use of said leased premises shall have ceased,
94 and after the receiver shall cease to use them in carrying on the business of operating the property which was subject of said receivership, would be contrary to equity and good conscience.

Defendants deny that said intervenor is entitled to the relief prayed for or to any other relief as against these defendants, and defendants ask the same benefit and advantage of this answer as if they had demurred to said intervening petition.

And, having fully answered, defendants pray to be hence dismissed, etc.

JOHN McNULTA, *Receiver*,
THE WABASH WESTERN RAILWAY CO.,
JAMES F. JOY,
O. D. ASHLEY,
THOMAS H. HUBBARD,
EDGAR T. WELLES,
By ISHAM, LINCOLN & BEALE.
WELLS H. BLODGETT,
GEO. B. BURNETT,
Their Solicitors.

(Endorsed:) Filed July 9, 1889. Wm. H. Bradley, clerk.

Afterward, to wit, on the twenty-ninth day of August, 1889, came John McNulta, receiver, and filed in said clerk's office his report for the month of June, 1889, in said entitled cause; which said report is in the words and figures following, to wit:

95 Wabash Railway.

John McNulta, receiver.

Receiver's Report of Receipts & Disbursements, June 1 to June 30, 1889, Inclusive.

Receipts.

* * *
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* * *
* * *
* * *

Disbursements.

Operating expenses.

Rent of general offices $975 00

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* * *
* * *
* * *

Supplies & materials.

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* * *
* * *
* * *

JOHN McNULTA, *Receiver.*

Endorsed: Filed August 29, 1889. Wm. H. Bradley, clerk.

96 Afterward, to wit, on the eighteenth day of October, in the adjourned October term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

United States Circuit Court, Southern District of Illinois, District of Indiana, Northern District of Ohio.

CHARLES H. BEERS *et al.*
vs.
WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others. } In Chancery.

THOMAS B. ATKINS and Others
vs.
WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others, } In Chancery.

and

JAMES R. JESUP and EDWARD H. DICKSON, Trustees,
vs.
WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others. } In Chancery.

Consolidated case.

Come now the several parties, by their respective solicitors, and

come also James F. Joy, Thomas H. Hubbard, Ossian D. Ashley, and Edgar T. Wells, the purchasing committee who have bought the railway property previously sold and conveyed under the decrees of the several courts in the above-entitled causes and others, and
97 file their petition, in writing, praying for the discharge of the receiver, and that all the assets, books, papers, accounts, vouchers, and property of every kind remaining in his hands as such receiver should be turned over to the Wabash Railroad Company, the corporation organized by such purchasers and which now owns and operates the railway property so bought.

Upon consideration thereof and the consent of all the parties to this cause the court grants the prayer of said petition and orders and decrees as follows:

That John McNulta, the receiver appointed herein, and his agents and employees do forthwith, upon demand, turn over and deliver to the Wabash Railroad Company all the money, assets, choses in action, books, papers, vouchers, accounts, and other property now in the custody of such receiver as the officer of this court.

That thereupon and by consent of all parties hereto the accounts of said receiver shall be held to be approved, and said John McNulta shall stand discharged and released from all further duties or liabilities as such receiver except as hereinafter provided, and his bond as such receiver shall be held to be satisfied and fully discharged, and the sureties thereon shall be released and discharged.

The court orders the delivery of such receivership assets, papers, and property to the Wabash Railroad Company on the express condition that the last-named corporation agrees to pay, satisfy, and fully discharge all the debts and liabilities of such receivership of every kind now remaining unpaid, and that it may further defend in the name of such receiver all litigated claims or demands against such receivership now pending in this or other courts, and
98 will fully abide by and pay any and all judgments and recoveries, together with costs, which may be rendered in any of such actions or litigations, and always protect and save harmless the said receiver from such claims or any of them.

And the said Wabash Railroad Company in open court, by Wells H. Blodgett, its solicitors, *and* stipulates to receive such receivership assets and papers upon the conditions of this order, and binds itself to faithfully perform the same.

The court reserves full power and jurisdiction over the said Wabash Railroad Company to compel such corporation at all times to fully and promptly perform and keep the said conditions and to make any and all such payments as this court shall adjudge it is required to do by force of this order, and that the said railroad company shall return to this court any papers or documents of such receivership when so directed by this court.

The said Wabash Railroad Company shall have the right, at its cost, to use the name of such receiver, if necessary, to enforce by suit the collection of any of such receivership assets, and the said receiver is hereby required to execute a formal written assignment or transfer of any and all such claims now due to him as such re-

ceiver and a conveyance of all property standing in his name as receiver.

99 Afterward, to wit, on the fifth day of April, in the adjourned March term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

CHARLES H. BEERS *et al.*
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.* } In Chancery.

In the matter of the petition of the Chicago Deposit Vault Company.

On this day the said matter comes on to be further heard upon the motion of said petitioner for leave to file its amended and supplemental petition, and, leave being now given to file the same, the said matter comes on to be further heard upon said amended and supplemental petition; and it appearing that due notice has been given to the parties respondents in said petition named, and said parties appearing by Smith and Harlan, of counsel, in that behalf, it is now, on motion of Paddock and Wright, of counsel for said petitioner, ordered that said respondents have seven days from this day within which to make answer to said amended and supplemental petition, with leave, if they so elect, to allow their answer or that of any of them now on file to stand as an answer thereto.

And it is further ordered that either party, on reasonable notice to the other, may appear before Henry W. Bishop, Esq., one of the masters in chancery of this court, and offer as evidence in
100 said matter any evidence in that behalf to be reported by said master and read upon the hearing of said matter.

On the same day, to wit, on the fifth day of April, 1890, came the Chicago Deposit Vault Company, by its solicitors, and filed in said clerk's office its amended and supplemental petition in said entitled cause; which said petition is in the words and figures following, to wit:

101 In the Circuit Court of the United States, Northern District of Illinois.

CHARLES H. BEERS
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY CO. *et al.* } In Chancery.

The Amended and Supplemental Petition of The Chicago Deposit Vault Company.

To the Honorable Walter Q. Gresham, judge of said court, in chancery sitting:

Your petitioner, The Chicago Deposit Vault Company, by leave

of court first had and obtained, brings this its amended and supplemental petition, and shows to your honor that it heretofore, to wit, on the 29th day of June, 1889, filed its original petition herein against John McNulta, receiver of the Wabash, St. Louis & Pacific Railway Company; the Wabash Western Railway Company, the Wabash Railroad Company, James F. Joy, O. D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, who are also made parties defendant to said supplemental petition, praying the protection of this court in its (petitioner's) rights under the lease in said petition mentioned, and further asking the court to provide for and assure to the said petitioner the payments of rents thereafter to accrue under said lease.

102 And your petitioner further shows that since the filing of said original petition there has accrued under said lease the sum of $7,875.00—that is to say, the rental of the premises in said lease mentioned for each of the months of August, September, October, November, and December, 1889, and January, Feb-uary, March, and April, 1890, at a monthly rental of $875, payable monthly in advance—which said sum of $7,875.00, together with interest, is now due and owing to your petitioner, no part thereof having been paid.

Your petitioner shows that said premises are still in the possession and under the control of said lessee or its assigns under said lease, your petitioner having at all times refused to accept a surrender thereof or to admit the right of said lessee to make such surrender; that although said petitioner has not accepted and has not been willing to accept any surrender of said premises, nevertheless petitioner and its agents have at all times been and now are ready and willing to act as the agents of said lessee in reletting said premises or any portion thereof for the account and benefit of said lessees or their assigns without prejudice to their rights under said lease.

And your petitioner craves leave to refer to all the orders and decrees in the matter of said receivership and all orders and decrees entered by this court or by the circuit court of the United States for the southern district of Illinois in the consolidated cause of James R. Jesup *et al. vs.* Said Railway Company, including the order for the sale of said railroad and the approval of such order as fully as if specifically set forth herein.

103 And by way of amendment to said original petition your petitioner, on the first page thereof, after the words "Your petitioner," inserts the words and figures following, to wit: That the bill in the above-entitled case was filed on the 25th day of June, 1886, by the said Charles H. Beers, on behalf of himself and other bondholders, for a foreclosure of a mortgage upon the Chicago Division of said road, praying, among other things, for the removal of certain receivers of said railroad company and the appointment of another receiver in their stead, as will more fully appear by the record thereof remaining in this court, to which, for greater certainty, your petitioner craves leave to refer.

That thereafter, upon the application of said complainant, Thomas M. Cooley was, by the order of Dec. 16th, 1886, appointed receiver of the

Wabash, St. Louis & Pacific Railway Company, with power to manage, control, and operate the same, and with full authority, subject only to the supervision of the court, to make all contracts that might be necessary in carrying on the business of said railroad, as will more fully appear by the record thereof remaining in this court, to which, for greater certainty, your petitioner craves leave to refer.

That thereafter, on the 4th day of April, 1889, the said defendant, John McNulta, was by the order of this court in that behalf made and entered of record in this court, and now for greater certainty referred to by your petitioner, appointed the successor of said Thomas M. Cooley as receiver of said railroad company, with like powers and authority as conferred upon the said Thomas M. Cooley.

That thereafter, to wit, on the 1st day of April, 1889, an order was made directing a sale of the property of said defendant company, which sale has since been had and approved; all which
104 matters are of record, which record is referred to by your petitioner for greater certainty in that behalf. Your petitioner further shows that, in addition to the said sum of $7,875.00, there is due from said receiver, M. McNulta, and his successor the further sum of $900.00 for rent of rooms No-. 710, 711, 515, and 516 in the said building of petitioner, under a certain other lease from said petitioner to said McNulta, for the months of August, September, October, November, and December, 1889, and January, February, March, and April, 1890.

Your petitioner therefore prays, as it has already prayed, that the said leases sued on be held to be valid and subsisting contracts, of binding force upon said lessee and his assigns, and that the said defendants or some of them be decreed to pay to your petitioner the said sums of $7,875 and $900, with interest as aforesaid, and that they or some of them further be required to pay to your petitioner the rent hereafter to accrue under said lease, at the time or times therein mentioned, out of the assets of said corporations, and for such other and further relief as the nature of petitioner's case may requ*iquire* and to your honor may seem meet.

And your petitioner will ever pray, &c.

THE CHICAGO DEPOSIT VAULT COMPANY,
By W. K. NIXON, *President.*

STATE OF ILLINOIS, }
County of Cook, } *ss:*

W. K. Nixon, being duly sworn, says that he is the president of said Chicago Deposit Vault Company, the above-named petitioner; that he has read the foregoing petition and knows that the matters and things therein contained are true.
105

W. K. NIXON.

Subscribed and sworn to before me this 4th day of April, 1890.

SAMUEL H. WRIGHT, [SEAL.]
Notary Public.

(Endorsed:) Filed April 5, 1890. Wm. H. Bradley, clerk.

106 Afterward, to wit, on the thirteenth day of June, 1890, came Henry W. Bishop, one of the masters in chancery of said court, and filed in said clerk's office his report in said entitled cause; which said report, together with the testimony thereto attached, *are* in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Illinois.

CHAS. H. BEERS *et al.*
vs.
WABASH, ST. LOUIS & PACIFIC R'Y CO. } In Chancery.

Petition of the Chicago Deposit Vault Company.

Master's Report of Testimony.

To the honorable the judges of said court:

I, Henry W. Bishop, master in chancery of said court, to whom, by an order entered herein, the above-entitled cause was referred for the purpose therein expressed, hereby report that having given notice to the parties interested that a hearing would be had before me, at my office, room 24, Honore building, in the city of Chicago, on Wednesday, the sixteenth day of April, A. D. 1890, I was at said time and place attended by Messrs. Paddock & Wright, representing the petitioner, and by Mr. Geo. B. Barnett, representing the defendant, and by Mr. J. Foster Rhodes and Mr. W. K. Nixon, witnesses for the petitioner, and by Mr. Irving W. Fink, a witness for the defendant, whose testimony was duly taken before me and is herewith reported.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated Chicago, June 13th, A. D. 1890.

107 *Testimony Taken before Henry W. Bishop, Master in Chancery of said Court, Wednesday, the 16th Day of April, A. D. 1890.*

Present: Paddock & Wright, for petitioner; G. B. Burnett, for defendant.

J. FOSTER RHODES, a witness on behalf of the petitioner, being first duly sworn, was examined in chief by Mr. WRIGHT, and deposes and says as follows:

Q. State your name and residence.

A. J. Foster Rhodes; Chicago.

Q. Do you know the intervening petitioner, The Chicago Deposit Vault Company?

A. Yes, sir.

Q. In the years 1886 and 1887 had you any connection with that company?

A. Yes, sir; I was secretary of the company.

Q. Do you know the defendant to this petition, The Wabash, St. Louis & Pacific Railway?

A. Yes, sir.

Q. Will you state what was the nature of your connection as secretary of the Chicago Deposit Vault Company and what you were doing at that time towards renting the building belonging to that company?

A. Mr. Nixon and myself together were giving attention to renting the company's building, known as the Rialto building, Chicago.

Q. I will ask you if you personally negotiated the lease mentioned in this petition—sued on in this petition—with the Wabash, St. Louis & Pacific Railroad Company.

A. I did.

Q. Look at the lease now shown you and state if that is the lease.

108 A. That is the lease I negotiated with Mr. T. M. Cooley, as receiver, representing the Wabash road.

Q. Will you state, as fully as you can now recall the matter, the conversation which lead up to the lease.

Objected to by counsel for defendant.

A. I had several interviews with Mr. Cooley and his private secretary, at the Grand Pacific Hotel, in regard to these rooms. They were at that time looking through the different buildings. We finally settled upon the price to be paid and the time for which the lease was to run. After consulting with Mr. Nixon I had the lease prepared at my office and went again to the Grand Pacific Hotel a day or two later and met Mr. Cooley and he executed the lease for the Wabash Company, as receiver.

Q. Were these negotiations at the time the lease bears date, December, 1886?

A. Yes, sir; it was signed on the date that the lease is made out there.

Q. Who were present at these conversations?

A. Mr. Cooley and his private secretary and myself.

Q. Do you recall the name of the gentleman who was with him?

A. I do not at this minute. I know him very well, too.

Lease offered in evidence. The introduction of the lease objected to unless it is proposed to show an order of the court in which Cooley was appointed receiver authorizing him to make the same.

Q. I notice a provision in the lease to this effect: "It is understood and agreed between the parties hereto that this lease may be canceled on May 1st, 1888, by the said party of the second part

109 upon his or his successors giving notice in writing to that effect on or before Feb-uary 1st, 1888." At whose request, if you now recall, was that incorporated in this lease?

A. That was incorporated at the request of Mr. Cooley.

Q. Did he state why he desired to have it there?

A. He said it might be that they would close up the receivership of the road within that time—it might go through a short route and be closed up entirely; if not, it would take at least the full length of the lease before the road would be sold, and that he would make it in that way, so that if he wished to give it up he could give me notice on or before Feb-uary 1st, 18888; otherwise he would make it the full term of four years & four months. I will state that at that time I was making leases only for five years. We were insisting on a lease for five years in every case. In this case he said he would rather make it four years and four months. As it was before the 1st of May, he would have it end four years from the 1st of May.

Q. Do you know of your own knowledge whether or not the receiver ever availed himself of this provision of giving notice?

A. He never gave any notice.

Q. Have you had considerable experience in the renting of buildings?

A. Yes, sir.

Q. How long a period did that experience cover, probably?

A. Six years, at least.

Q. Were you familiar with the renting market at that time in this city?

A. I was. I had charge of other office buildings at that time and was renting a great many offices.

110 Q. I will ask you if it is your opinion, as a man having experience in these matters, that a railroad company could have secured the lease of offices, such as this company was desiring to secure, upon other or different terms than those here set forth?

A. They could not have had better terms than those. As regards price, we had considerable dickering before finally settling upon the price named in the lease as a very low price. Mr. Cooley and his secretary at that time had visited a great many offices here, and this they considered the best lease they could make.

Q. Are you still secretary of the Chicago Deposit Vault Company?

A. Yes, sir.

Q. Has it ever been the policy of the company to rent one or more or any number of its rooms from month to month?

A. No; we never under any circumstances rent from month to month; we never have.

Cross-examination.

By Mr. BURNETT:

Q. You say that Mr. Cooley executed this lease on behalf of the railroad company. What do you mean by that?

A. I meant that he executed the lease as receiver of the Wabash Railroad Company.

Q. That is all you meant by that statement?

A. That is all.

Q. When you say that he could not have got other offices on better terms you have reference to the price?

A. I have reference to the price and the time. We were making five-year leases at that time only.

Q. Do you pretend to say—do you swear that he could
111 not have gotten any offices in the city of Chicago on better terms as to time?

A. No; I only have reference to this building.

Q. Did your deposit company have an attorney at that time?

A. No; I don't think we did.

Q. Did you advise with anybody as to the power of the receiver to execute a lease that would be binding beyond his receivership?

A. I did not, except a conversation with Mr. Cooley about that, where it was stated that this was something in the nature of an expense to the company and would be taken care of, and I told him I would rather have him as receiver than have the company in a weak condition.

Q. Didn't you know that Mr. Cooley did not represent the company at all as receiver?

A. I knew he did at that time.

Q. You testify that he did represent the company as receiver?

A. He told me he was receiver of the Wabash Railroad Company.

Q. Did you understand that the receiver of a railroad company represents the company or the bondholders?

A. He represents the bondholders—he represents the court.

Q. His position is antagonistic to the company, is it not?

A. Well, he is the officer in charge of the company under the court.

Q. And he acts upon the orders of the court?

A. Yes, sir.

Q. And he cannot do any act except what the court approves—you understand that, don't you?

A. I had my talk with him. I knew Judge Cooley's——

Q. I ask you if Judge Cooley did not tell you in that conversation that he could not bind the property for a term beyond his receivership?

112 —. No, sir; he did not.

Q. Didn't he tell you in that conversation that when the receivership terminated the lease would terminate, without regard to the terms of the lease?

A. No, sir.

Q. This Rialto building is well situated, isn't it, for leasing?

A. Well, some might say it is well situated. Of course, it is in the rear of the Board of Trade.

Q. Well, it is a good building?

A. Yes; it is a fire-proof building.

Q. There has been in Chicago plenty of demand for that kind of building for offices?

A. The office-building in this city for a while was very much overdone, and there have been a great many vacant offices in that district since that time.

Q. Judge Cooley occupied the position of receiver only for a short time—you understand, don't you?

A. I don't remember just the time.

Q. You knew he was succeeded by John McNulta?

A. Yes.

Q. And John McNulta continued to occupy the building up to what time?

A. As to the time he went out I am not so well informed, because I haven't had charge of the leasing of the building for the last few years. I had general supervision of it—Mr. Nixon and myself—but I have not had for the last year or two the leasing of the building. We have an agent there to attend to it.

Q. Do you know, as a fact, that General McNulty gave notice to your company that the receivership would terminate on a certain day and that he would surrender possession?

A. No; I don't think he ever have any notice that his re-
113 ceivership would terminate.

Q. Have you had anything to do with the leasing of that building since General McNulty left it?

A. No.

Q. Have you had any experience with any of the officers or agents of that company with respect to leasing it?

A. No; I have not.

Redirect examination by Mr. WRIGHT:

Q. Have you any personal knowledge of the subsequent occupation and leasing of four additional rooms by the railroad or by its receiver?

A. Nothing, except that in my general supervision of the business of the company I have come across the information that they were occupying four other rooms for which leases had been made out and offered, I believe, but never signed. The rent was paid.

Q. I understood you to say, in response to Mr. Burnett, that in the conversation you had with Judge Cooley he in no way impeached his own authority to sign this lease for the term mentioned in it?

A. He did not.

Q. And neither at that time nor any other time gave you notice that the lease would require a confirmation or order of the court?

A. No; he gave me to understand he had full authority at that time.

(Signature waived.)

114 *Testimony Taken before Henry W. Bishop, Master in Chancery of said Court, Wednesday, the 16th Day of April, A. D. 1890.*

Present: Paddock & Wright, for pet.; G. B. Burnett, for def't.

W. K. NIXON, a witness on behalf of the petitioner, being first duly sworn, was examined in chief by Mr. WRIGHT, and deposes and says as follows:

Q. Will you give your name and place of residence?

A. W. K. Nixon; Chicago.
Q. You are the president of this intervening petitioner?
A. Yes, sir.
Q. And were at the time this lease was negotiated?
A. Yes, sir.
Q. This is your signature as president to this lease, is it not?
A. Yes, sir.
Q. Were the terms and conditions of this lease—in other words, the lease itself—referred to you for approval before signature?
A. Yes, sir; Mr. Rhodes came to me and told me he could secure the road, or thought he could, and I told him to do so, as we wanted good customers of that kind. The question of authority came up between us, and he said Judge Cooley was ready to sign the lease and claimed to have authority to do so, and I thought he was too good a lawyer to make such a claim without authorization to do so.
Q. At the time of the signing of that lease you were not notified by Mr. Rhodes or Judge Cooley or any one connected with the road or representing the railroad company that this lease was in excess of the authority of the receiver, were you?
115 A. Not at all.
Q. You were not requested by Judge Cooley or any one representing the road to have the lease confirmed by the court, were you?
A. Not at all.

EXHIBIT 1, INT. PET. Apr. 16, 1890. H. W. B., Master.

To the Chicago Deposit Vault Company, Chicago, Illinois:

I hereby respectfully notify you, as I have already heretofore verbally notified you, that from and after the first day of August next I shall not need the rooms in the Rialto building, being numbers 523 to 547, inclusive, on the fifth floor and the west half of the south wing on the seventh floor, now occupied as Wabash railway offices by me as receiver, and I shall cease to use said offices and shall surrender possession thereof to you on the 31st day of July next. No rental for said offices or any of them will be paid by me after that date, but the rental for July will be paid in the usual course of payment.

JOHN McNULTA,
As Receiver of Railway Property Formerly Belonging to the Wabash, St. Louis & Pacific Railway Company and Now Called for Convenience the "Wabash Railway."

116 Q. The road went into possession under this lease?
A. Immediately; they were in great haste to get in.

Mr. BURNETT:

Q. You mean the receiver when you say the road?
Mr. WRIGHT: Yes; I used the words interchangeably.
—. You heard me read the clause incorpirated here in this lease as to giving notice of cancellation on or before May 1st, 1888?

A. I did.

Q. I will ask you if, under that provision, any notice was given for the termination of the lease?

A. None at all.

Q. The company continued to occupy the rooms?

A. They continued to occupy them. We received no notice until the 28th or 29th of June, last year.

Q. In the mean time Receiver Cooley had been succeeded in office, had he not, by General McNulta?

A. I did not know it until I got the office.

Q. You now understand it?

A. I now understand that to be the case.

Q. Is this paper which I now hand you the notice that the company received from General McNulta?

A. Yes, sir.

Notice offered in evidence by Mr. Wright.

Q. What did you do upon receipt of that notice?

A. I took steps at once to hold the company here, so far as our claim was concerned, and called at your office an hour after getting the notice.

Q. Did you make them any communication, either by yourself or by your counsel?

A. I requested my counsel to take any steps that were necessary. I don't remember making any communication at that time
117 to General McNulta.

Q. Did you ever, either by word of mouth or by writing of any sort, admit their right to withdraw from the occupation of these rooms under that notice?

A. Never.

Q. Up to what time was rent paid under this lease?

A. Up to the time named in that notice—I think the 30th of July.

Q. Has the rent been paid since that date?

A. No, sir.

Q. Can you now state how much rent has accrued up to the present time under this lease?

A. Ten months' rent of those and also of the four additional rooms.

Q. Has the receiver or any agent of the receiver or the company as reorganized ever offered to assist you in renting the rooms for their benefit?

A. Never.

Q. Are the rooms vacant to this day?

A. The rooms are vacant.

Q. Did you ever make any proposition to counsel representing the receiver to assist them in renting the rooms for their benefit?

A. I don't know that we called it a proposition. I made a suggestion to him. I was informed——

Q. When you say him, whom do you mean?

A. I mean Mr. Beale, of Isham, Lincoln & Beale. I was in-

formed by one of our agents in the building that General McNulta would like me to call at Isham & Lincoln's office, and I did so and found both Mr. Isham and Lincoln away. Mr. Beale was there and I told him I understood General McNulta wanted me to call. He said he thought that was a mistake. I rose to leave and Mr. Beale—I don't remember exactly the words he used, but he opened the subject up a little as to what he desired to do, and I told him

118 if anything could be done with the rooms, if they desired me to take steps to rent them and would make an offer that seemed acceptable to me, that we might agree upon some compromise, but it would have to be done within such time as would give us a chance to rent—in other words, that the 1st of May being our regular renting time, and the fall of the year also a pretty fair time—I think this was about August—that if they desired to make any such arrangement at that time it would give us a double chance of renting, and that with proper payment on their part, proper compromise, we might induce parties to go in; at all events, I said I would take some chan-es on it. He seemed to consider the matter favorably. He made no acceptance of it or anything of that sort, but he said that—well, I got the impression that it might be managed, and at the same time that the case would probably have to come up in some way first, I don't understand exactly how. I made no further efforts, I think, to make any compromise. I gave him to understand that if the year passed over so that there would be less than a year left we could not make any compromise whatever, because there would be no likelihood of our getting anything out of the rooms unless we could give possession about the 1st of May.

Q. Nothing came of that offer?

A. Nothing came of it—no.

Q. I will ask you if you have had large experience in the renting of office buildings in this city.

A. I have.

Q. Covering a period of years?

A. Covering over 25 years in this city and 15 or 20 years before I came to this city.

119 Q. I will ask you if in 1886, about the time this lease was negotiated or signed, the office building had been overdone in buildings of this sort.

A. It had for the moment. I shouldn't say greatly overdone; but there were at all times for two or three years and there are to-day probably three or four hundred good office-rooms vacant; but the stopping of building for four or five months would fill up everything in the city. It is in that particular neighborhood about the board of trade that the thing was overdone. It was built up very suddenly and they rented with astonishing rapidity.

Q. Is it your opinion that the policy of the building was, as Mr. Rhodes states it, to rent for long terms?

A. Not only in that building, but every other building I ever had anything to do with.

Q. That was a new building at that time?

A. It was a new building, just finished, at that time.

Q. Were all the leasings at that time in that building, so far as you recollect, for long terms?

A. All we made at that time. We have never rented for short terms when we could get long ones. Although more money might be gotten out of it, yet you are apt to have tenants changing, and it is not so good for a building in the long run to rent for short terms.

Q. Do you recall the leasing and occupation of four other rooms in that building by the receiver or the company?

A. I do.

Q. About what time did that occur?

A. That I could not say, but I should think it might be
120 any time from six to eighteen months. They were rented at two different times—first two rooms and then two others. The leases were brought to me and I signed them and I sent them at different times to the rooms and always got back word that the proper parties were busy or were not there, and so the thing ran along. The leases are in their possession now, however, unless they are destroyed.

Q. Can you recall substantially the contents of those leases? Were they in the form of the lease introduced in evidence?

A. Yes; that is the only form we ever used in that building.

Q. Do you recall to whom the leases ran, also?

A. No; in our own minds we have always called it the Wabash road.

Q. Isn't it probable that they conformed to the other leases?

A. They conformed as to the time of expiration. They ran to the termination of this lease.

Q. You have never seen the leases since they were delivered to them, have you?

A. No, sir.

Q. What was the amount for which these rooms were rented?

A. They were four rooms at $300 each, $1,200 for the four.

Q. The rent was paid up to the 31st of July, also?

A. Yes; and before the 31st of July I received a message from General McNulta or from some one acting for him, asking on what terms we would lease those four rooms, as they might want to occupy them after leaving the others. I returned answer—the message was an oral one and I answered in the same way—that we had not those rooms for rent, as they were already leased to them some time before, and I had no new terms to make on them.

Q. What, if any, response did you get to that message?

A. None whatever.

121 Q. Has any rent been paid for those rooms since the 31st of July?

A. I think not.

Q. You would be apt to know if any had?

A. I might not possibly, because the money would go to the treasurer and he might not report it to me. I made no inquiry in regard to it, but I imagine not.

Q. Will you ascertain?
A. I will do so.
Q. Are those rooms vacant now?
A. I believe so.
Q. Do you now recall whether in the lease as drawn up for those four rooms there was any provision made for the termination of the lease?
A. None whatever.
Q. Straight lease, was it?
A. A straight lease.
Q. Expiring at the term fixed in the lease already offered in evidence?
A. Yes; we have had a good deal of that sort of experience with railroads. They always need more room later, after going in, and we always make the lease expire the same time as the original lease. That is one of our variations from leasing for five years.

Cross-examination.

By Mr. BURNETT:

Q. These four rooms were vacated at the same time as the others? They were all vacated the 31st of July?
A. No; I think some were vacated sooner. I don't know that any of them were held later, but I went in to show some parties these rooms on two or three different occasions.
Q. But all the time the rooms were occupied by Cooley or McNulta, as receiver. The rent was paid up to the time of their quitting possession?
A. I suppose it was, sir; I don't know.
Q. What application have you had to rent those rooms
122 since Mr. McNulta went out of them?
A. I have had no applications coming to me from parties desiring to rent those rooms, but I have taken two or three different parties there and shown them the rooms and told them I would get authority, if I hadn't already sufficient, from General McNulta or his attorneys if they thought they would like them. Of course, we would prefer to have the building occupied.
Q. Do you know an institution here called the Chicago Horological Institute, of which Mr. Irving W. Frink is president?
A. No.
Q. Did you ever have any application from such institution to rent rooms?
A. No.
Q. Did you ever have any inquiry about the rooms?
A. No one ever asked about the price of the rooms. People frequently came and asked me what rooms I had for rent. Why I say I remember distinctly that the rooms were not all vacated at the same time is that I took people connected with the Milwaukee & St. Paul road over there to show them these rooms and see if they wouldn't suit them, but they said we didn't have room enough in the whole building for them.

Q. Have you made any effort since McNulta left the building to rent the rooms?

A. Yes; I have taken parties there.

Q. Have you advertised them for rent?

A. We never advertise rooms for rent.

Q. Isn't it a fact that you told all persons inquiring about them that you hadn't anything to do with them?

A. That I wouldn't take the risk of renting them without full authority from the road, as I put it.

123 Q. In other words, you put yourself in the attitude of acting as the agent for McNulta to rent them if anybody wanted to rent them, but you declined to rent them as your building?

A. I didn't decline, because no one ever offered to rent them; but I took people especially to see them.

Q. When inquiries were made to you about the building you simply stated that you hadn't any authority to rent them?

A. No; I didn't state that I had no authority, but I would get full authority to rent them from the other party.

Q. I will ask you if you did not know at the time this lease was executed that Judge Cooley had no authority whatever to make a lease that would run beyond his receivership.

A. No; I never heard of such a thing until now.

Q. That he had no authority to make a lease without the protection of the court?

A. That was once stated, but I supposed Judge Cooley was too good a lawyer to assume an authority he did not have.

Q. You have had large experience in renting buildings, and from that you got your impression?

A. No.

Q. Well, why was the inquiry made as to his authority?

A. As to his authority?

Q. Yes, sir.

A. I made no inquiry as to his authority.

Q. Why did you assume then that he, being a good lawyer, had authority to make the lease?

A. That occurred to me when I got this notice from General McNulta.

Q. So, until you got that notice, you supposed a receiver could rent a building for any period of time he saw proper?

A. I didn't know anything to the contrary.

124 Q. For ten years or a hundred years and beyond the subject-matter of the receivership, and could do this without any authority from the court?

A. It is a matter that never occurred to me.

Mr. WRIGHT: I will ask you if when Mr. Cooley went out of his position as receiver of that road he surrendered this lease for cancellation, or his copy of it.

A. No, sir.

Q. I will ask you if at the time General McNulta was appointed

his successor and took possession of the road he came to you to negotiate a new lease.

A. Never.

Q. He continued to pay the same rental under this lease?

A. The same rent in the same way.

Q. In fact, it was not brought to your notice by them that the road had changed hands and gone from one receiver to another?

A. Never.

Q. What has become of the copy of the lease, the original duplicate of this?

A. It was handed to Judge Cooley at the time it was signed.

Q. You have never seen it since?

A. Never.

(Signature waived.)

125 *Testimony Taken before Henry W. Bishop, Master in Chancery of said Court, Monday, the Twenty-eighth Day of April, A. D.* 1890.

Present: Mr. Wright, of Paddock and Wright, for petitioner, Chicago Deposit Vault Company; Mr. Geo. B. Burnett, for defendant.

IRVING W. FINK, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. BURNETT, and deposes and says as follows:

10 A. M., *April* 28, 1890.

IRVING W. FRINK, a witness called on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct examination by Mr. BURNETT:

Q. State your name, age, and occupation.

A. Irving W. Frink; residence, 263 Ontario.

Q. State your business.

A. My office is president of the Chicago Horological Institute.

Q. Do you know the Rialto building, in Chicago?

A. I do.

Q. How long have you known it?

A. For the last five years.

Q. Do you know the rooms formerly occupied by General McNulta, receiver of the Wabash railway?

A. I was shown such rooms as was formerly occupied by the Wabash people.

Q. What time?

A. It was between twelve and one o'clock, about—well, I should say, as near as I can remember, six weeks ago.

Q. By whom were you shown the rooms?

126 A. By an old gentleman in the office of the building. I don't know his name; quite an elderly man, and a very pleasant one at that.

Q. Well, before seeing the rooms did you make any application to rent them?

A. Not before I applied, I did not.

Q. Did you make any application to rent any part of them?

A. I did later. I was told that the rooms were in litigation.

Q. When did you make application to rent them?

A. Well, there might have been two weeks intervening when I called into the office again to talk with them about space.

Q. To whom did you make application to rent them?

A. The young man in the office.

Q. What office?

A. Office of the building. He was the one that I had most of the talk with. The old gentleman was called in.

Q. Who do you mean by the old gentleman?

A. I don't know his name, sir.

Q. What do you mean by the office of the building—the office that has charge of the renting the building?

A. Yes, sir.

Q. Were you desirous of renting rooms?

A. I was; yes, sir.

Q. Did you make application to rent them?

A. I think I did.

Q. Well, what reply did you get?

A. Well, they said that they could not rent me these rooms for the reason that they were in litigation; that they were leased by the Wabash people for a term of five years. I think they said that the Wabash people vacated them after an occupancy of two years,

127 and that they left them for the balance of the term.

Q. Well, did they or did they not decline to rent them?

A. They declined to rent them.

Q. What rent were you willing to pay for them?

Mr. PADDOCK: We object to the materiality of this matter.

A. I made them an offer on the other half of the floor, I think, something like $1,500 or 1,800. I felt that $2,000 was as high as I could go.

Q. What do you mean by the other half of the floor?

A. Well, the other half that faces east, that was occupied by the Santa Fé people.

Q. Well, did you want all of the rooms that were occupied by McNulta?

A. I suppose I did. I intended to be very thorough in looking around to see what they were.

Q. When you say you made application to rent, you mean you made application to rent all the rooms that they had formerly occupied?

A. Yes, sir. I told them in the office that they just suited me and I would like to rent them, but they refused to do anything about it.

Q. Do you know Mr. Nixon?

A. I have met Mr. Nixon two or three times.

Q. Did you have any conversation with him about them?
A. No, sir; not at all. The young man in his office first directed me to the office of Lake street.
Q. You first went to Mr. Nixon's office?
A. Yes, sir; I went to his office first. I was searching for rooms.
Q. What is Mr. Nixon's office?
A. Well, that as his business office in the Illinois Bank building.
Q. The office you went to was the office of the building?
128 A. Yes, sir; when I made application for the rental of these rooms.
Q. Well, that is a place where they rented rooms?
A. Yes, sir.
Q. You first made application to Mr. Nixon's office?
A. I went into his office to see at that time if there were any rooms in the Illinois Bank building.
Q. He is the president of the Chicago Safe Deposit and Vault Company?
A. I don't know that Mr. Nixon had any connection with the Rialto when I went into the office. I was in search of rooms in his building.
Q. From there you went to the Rialto building?
A. I was sent over there with a note to the old gentelman in the Rialto building.
Q. Who gave you that note?
A. A young man in Mr. Nixon's office.
Q. His clerk?
A. His clerk, I suppose.
Q. Well, when you speak of the price that you were willing to pay do you mean per year, per annum?
A. Yes, sir; per annum.

Cross-examination by Mr. PADDOCK:

Q. Mr. Frink, what was your business at the time you went over to the Rialto building—in what business were you engaged, the same that you are now engaged?
A. Yes, sir.
Q. And you desired these rooms for your own use?
A. For my school; yes, sir.
Q. For your school?
A. Yes, sir.
Q. Are you acquainted with Mr. Nixon, who is present here to-day?
A. I have met him; I know him by sight; that is all.
129 Q. When did you first meet him?
A. Three years ago, I guess it was.
Q. You had no conversation with Mr. B. G. Nixon on the subject?
A. No, sir.
Q. Did I understand that you went over there twice?
A. I think I made three or four trips over to the building to rent rooms on one end of the building or the other.

Q. You went to the Illinois Bank building, or wherever it is—Mr. Nixon's office?
A. Yes, sir; to his office.
Q. How many pupils have you in your school?
A. In the neighborhood of sixty.
Q. Sixty pupils?
A. Between fifty and sixty.
Q. What was taught to these pupils?
A. They are taught the art of watch making and repairing.
Q. Did you afterwards find rooms for your school?
A. I did; yes, sir.
Q. Where are they?
A. At 320 Dearborn, Mr. Hyson's new building, called the Monon building.

(Endorsed:) Filed June 13, 1890. Wm. H. Bradley, clerk.

130 On the same day, to wit, on the 13th day of June, 1890, there was filed in said clerk's office a lease in said entitled cause; which said lease is in the words and figures following, to wit:

EXHIBIT TO INT. PET. H. W. B., Master.

Lease.

Parties.

This indenture, made this 31st day of December, in the year of our Lord eighteen hundred and eighty-six, between the Chicago Deposit Vault Company, of Chicago, in the county of Cook, in the State of Illinois, party of the first part, and Thomas M. Cooley, receiver of the Wabash, St. Louis and Pacific Railroad Company, of the city of Chicago, in the county of Cook, in the State of Illinois, party of the second part, witnesseth:

That the said Chicago Deposit Vault Company, in consideration of the covenants and agreements herein contained on the part of the said party of the second part and his successors and assigns to be kept and performed, doth by these presents grant, demise, and lease unto the said party of the second part, his successors and assigns (such assigns being with the license hereinafter mentioned), those certain rooms in the building known as the Rialto building, situate at Nos. 135 to 153, inclusive, Van Buren street, in said Chicago, to wit, rooms Nos. 523 to 547, inclusive, on the fifth, and west half of the south wing on the seventh, floor of said building, said premises to be occupied by said Thomas M. Cooley, receiver, for the uses and purposes of a general railroad office and for no other purposes:

Description of premises.

131 To have and to hold the premises hereby demised, with the rights, easements, and appurtenances thereto belonging, unto the said party of the second part, his successors and assigns (such assigns being with the license hereinafter mentioned), from the first day of January now next, including said day, during the full term of four years and four months thence next ensuing, viz., until the thirtieth day of April, A. D. 1891, yielding and paying therefor during the said term (except only in case of fire or other casualty, as hereinafter mentioned) as follows, to wit: Unto the said Chicago Deposit Vault Company, its successors and assigns, the yearly rent or sum of ten thousand and five hundred dollars ($10,500.00), such yearly rent to be payable monthly, in advance, in equal monthly portions, to wit, eight hundred and seventy-five dollars ($875.00) on the first day of each month in said term, the first monthly payment to be made on the first day of January now next; and the said rent shall be paid at the office of the said Chicago Deposit Vault Company or its agent, in Chicago.

Term.

Rent reserved.

Place of payment.

It is expressly understood and agreed by and between the parties hereto that it shall not be necessary in any event for the lessor or its agent, successors, or assigns to go elsewhere than at the place above specified for the payment of the same.

And the said lessor agrees to pay the water rates and to furnish, at its own expense, the steam for the steam-heating apparatus in said premises when necessary from October to May, both inclu-

132 sive, from seven o'clock a. m. to six o'clock p. m. (Sundays and legal holidays excepted), but it shall not be liable for damages for unavoidable delay in so doing.

Lessor to furnish water and steam-heating.

And the said lessee, for himself, his successors and assigns, hereby covenants and agrees with the said Chicago Deposit Vault Company, its successors and assigns, that the said lessee, his successors and assigns, will, during the said term or any portion thereof and for such further time as he or any person claiming under him shall hold the said premises or any part thereof, pay unto it the said yearly rent as aforesaid, except only in case of fire or other casualty, as hereinafter mentioned, and also will keep all and singular the said premises in such repair as the same are in at the commencement of said term or may be put in by the lessor or its representatives during the continuance thereof, reasonable use and wearing thereof and

Lessee to restore premises in good repair.

damages by accidental fire or other inevitable accidents excepted.

And the said lessee, for himself, his successors and assigns, hereby covenants and agrees with the said Chicago Deposit Vault Company, its successors and assigns, to restore the premises to the lessor with the glass, of like quality in the several windows thereof, entire and unbroken, and will not allow any waste of the water or misuse or neglect of the water fixtures or steam-heating apparatus, and that he will pay all damages to the demised premises caused thereby, and will indemnify and save harmless the lessor, its successors or assigns, from all claims for damages done to any goods, merchandise, or personal property by such water or by such misuse or neglect, and that
133 all personal property in the demised premises shall be at the risk of the lessee only, and, if the whole or any part thereof shall be destroyed or damaged by fire, water, or otherwise, or by the leakage or bursting of water pipes, or by the steam-heating apparatus, or in any other way or manner, no part of said loss or damage is to be charged to or be borne by the lessor, its successors or assigns, in any case whatever; and, further, that he or others having his estate in the premises will not assign this lease or underlet the whole or any part of the said premises nor permit any other person to have desk room in or occupy the same without the written assent of the said Chicago Deposit Vault Company, its successors or assigns, first had and obtained therefor, and that no express or implied assent by the party of the first part to the assignment of this lease or to the underletting of any part of said premises shall be deemed or taken to authorize any subsequent or other assignment or subletting, but written assent, as aforesaid, shall be essential in each separate case of proposed assignment or subletting, but such assent shall not be withheld when the proposed subtenant and his business are unobjectionable.

Lessee's property on premises at his own risk.

In regard to assignment or subletting.

And it is further expressly understood and agreed between the said parties that in case the said party of the second part shall abandon said premises or any part thereof during the continuance of said term the said party of the first part may, at its option, without notice, and either in its own
134 name or as the agent of the said party of the second part, relet said premises or any part thereof on such terms and for such rent as it may deem expedient or proper, and such reletting shall

not operate as a waiver of any right whatever which the said party of the first part would otherwise have to hold the said party of the second part responsible for the rent above reserved; and in case said premises or any part thereof shall be relet, as aforesaid, the said party of the first part shall collect the rent therefor from the person or persons to whom the same shall be relet, and, after paying the expenses of such reletting and collection, apply what remains of the amount received by it on account of the rent due or to become due from the said party of the second part under this lease.

Covenants as to locks, keys, vault combinations, signs, moving of heavy articles, use of premises, employment of janitor, and rules of the building.

And, further, that no steam engine or boiler shall be put on the premises and no alterations or additions shall be made during the term aforesaid in or to the same; that no additional lock shall be put upon any door of said rooms without the consent of the lessor being first obtained in writing allowing the same, and any and all locks placed on any door shall remain to the benefit of the lessor, and that he will, at the termination of his estate in the premises, return all keys of said rooms and of the water-closets, and will give to the lessor or its agent the explanation to the combination of all locks on the doors of the vaults, and will not permit any duplicate keys to be made—the lessor to furnish all necessary keys—and that he, the said lessee, his successors and assigns, will not injure, overload, or deface the said building or permit the same or any part thereof to be injured, defaced, or overloaded, and that he will not at any time during the said term permit or suffer to be used, exercised, or carried on in or upon said premises any noisome, noxious, noisy, or offensive trade or business, or occupy or use said premises or permit said premises to be occupied or used at night or as a lodging or for any immoral or any illegal purpose, and that it shall be lawful for the said lessor or its agent at all times to enter or send its agent, mechanics, or servants into and upon the same to examine the condition thereof and to examine, maintain, repair, or protect any and all things pertaining to said premises, and that no signs shall be attached to said building by drilling into the stone or iron-work or by fastening into the joints of the same, and that no signs shall be put up, fastened, or painted upon said building or in the halls, stairways, or entrances or on the sidewalk (except opposite the respective numbers on

the bulletin boards provided for that purpose, or on the glass in the doors and the glass of the windows of said demised premises), without the
136 consent of the first party being first obtained in writing, and all signs shall be made in gold or silver leaf lettering, and both in size, style of lettering, and material, under written instructions of the lessor or its agent, and shall first be approved by the party of the first part before being put up, and that the said party of the second part will not suffer any rubbish, ashes, dirt, or filth to be thrown into the halls, courts, areas, or privies of said building, or out of the windows nor into the street in front of said building, and no dirt, ashes, stoves, or furniture, or other article shall be left in the halls of said building, and that in the care of said rooms no person other than the janitor of the building or his assistant shall be employed, to be paid by the lessee; that all safes, furniture, boxes, or other bulky articles for said room shall be carried up the stairs of said building before nine o'clock a. m. or after five o'clock p. m., and that the said lessee will pay all damages to said premises, stair-cases, or halls caused by any such moving of heavy or bulky articles as aforesaid, and that during said term he will conform to all reasonable regulations made by the lessor, its successors or assigns, for the government of the said building, and that the lessor or its representative may place on the front of said premises a
137 notice, "For rent," for three months prior to the termination of this lease, and that the janitor of said building shall at all times keep a pass-key and be allowed admittance to said rooms. It is understood and agreed between the parties hereto that this lease may be cancelled on May 1st, 1888, by the said party of the second part upon *he* or his successors giving notice in writing to that effect on or before Feb'y 1st, 1888.

Covenants against use of stoves, kerosene, etc.

And, further, that he or others having his estate in the premises will not use burning fluid, camphene, alcohol, kerosene, or anything except gas or electricity, in lighting said premises, and will not put up or use any stove without the consent of the lessor, and that all stoves used in said demised premises shall be placed on a zinc platform or plate of zinc at least three feet square, and when any stove shall be placed nearer any woodwork than three feet such wood-work shall be cased with zinc at least three and a half feet high and three feet wide, and that he will not invali-

date any policies of insurance now or hereafter made on said building, and that he will pay all extra insurance on said building, if any is required, on account of extra risk in the use of the demised premises.

Extra insurance risk.

It is further agreed that the lessee and his successors and assigns shall and will, at the expiration of said term or other termination of the
138 lessee estate in the premises, peaceably yield and give up unto the said lessor or its successors or assigns all and singular the premises and all fixtures and future erections and additions to or upon the same in good, tenantable repair in all respects, reasonable wearing and use thereof and damage by fire or other inevitable accidents excepted:

Covenants to surrender peaceable possession and in good repair.

Provided always, and these presents are upon this condition, that if the lessee or his representatives or assigns do or shall neglect or fail to perform and observe any or either of the covenants hereinbefore contained which on his part are to be performed the said lessor, its successors or assigns, lawfully may, immediately or at any time thereafter and whilst such neglect or default continues, and without further notice or demand, enter into or upon said premises and repossess the same as of its former estate and expel the said lessee and those claiming under him and remove his effects (forcibly, if necessary) without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant; and if, by virtue of any statute or statutes for the relief of insolvent debtors and the more equal distribution of their effects or by virtue of any act to establish a uniform system of bank-
139 ruptcy throughout the United States or of any insolvent law or bankrupt law, a warrant shall be issued against the estate or estates of the lessee or of those having estate in the premises (either upon his petition or upon that of any creditor); or if he shall become insolvent or shall make an assignment for the benefit of his creditors, or if the term named in this lease shall be attached or taken on execution, the lessor, its successors or assigns, may in like manner enter and repossess the premises and expel the lessee and those claiming under him and remove his effects; and in any case in which such entry, expulsion, and removal are lawful under the provisions above set forth, such entry upon the premises or upon any part thereof in the name of the

Covenants as to re-entry and termination of lessee's interest by fire, etc.

whole (with or without such expulsion or removal) shall determine this lease; and provided also that in case the premises or any part thereof shall, during said term, be destroyed or damaged by fire or other casualty so that the same shall thereby be rendered unfit for use or habitation, then and in such case the lessor, its successors or assigns, may at any time within sixty days after the happening of such casualty, by notice in writing to the lessee or those having his estate in the premises, determine this lease, and unless it be so determined the rent hereinbefore reserved
140 or a just and proportional part thereof, according to the nature and extent of the injury sustained, shall be suspended or abated until the said premises shall have been by the lessor put in proper condition for use and habitation; but in any event the rent shall be paid up to an- including the day of said fire or casualty.

And the said party of the second part hereby makes, constitutes, and appoints any attorney of any court of record to be his true and lawful attorney, irrevocably, for him and in his name, place, and stead to enter appearance in any court of record or before any justice of the peace at any time after any rent is due upon this lease or after this lease is determined, by default or otherwise; to waive process and service thereof and trial by jury or otherwise, and confess a judgment of guilty of forcible detainer of the above-demised premises or any part thereof and for costs of suit in favor of said Chicago Deposit Vault Company, its successors and assigns, and to release all errors that may occur or intervene in such proceeding, and particularly in the waiving of process and service thereof and trial by jury or otherwise and in the entering up of said judgment and the issuing of the writ of restitution thereon, and to stipulate that no writ of error or appeal shall be prosecuted from the said judgment, nor any bill in equity filed, nor any proceeding of
141 any kind taken, in law or equity, to interfere in any manner with the operation of said judgment or the writ of restitution issued thereon, and to consent that a writ of restitution may be immediately issued upon said judgment.

Confession of judgment in forcible entry and detainer.

And it is further covenanted by and between the parties that the party of the second part shall pay and discharge all costs and attorneys' fees and expenses that shall arise from enforcing the cove-

Lessee covenants to pay attorneys' fees.

nants of this indenture by the party of the first part, *his* heirs or assigns.

In witness whereof the said parties of the first and second parts have hereunto interchangeably set their hands and seals the day and year first above written.

THE CHICAGO DEPOSIT VAULT CO.,
[SEAL.] By W. K. NIXON, *President.*
THE WABASH RAILWAY CO., [SEAL.]
By T. M. COOLEY, [SEAL.]
Receiver.

J. FOSTER RHODES, *Secretary.*

(Endorsed:) Lease, Chicago Deposit Vault Co. to Thomas M. Cooley, receiver, rooms Nos. 523 to 547 in the —, and W. ½ S. wing 7th, floor, Rialto building, from January 1st, 1887, to April 30th, 1891; amount per annum, $10,500.00; amount per month, $875.00, payable monthly in advance.

(Endorsed:) Filed June 13, 1890. Wm. H. Bradley, clerk.

142 On the same day, to wit, on the thirteenth day of June, in the adjourned May term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

CHARLES H. BEERS *et al.*
vs.
WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY. } In Chancery.

Now come the parties to the petition of the Chicago Deposit Vault Company, by their solicitors, and said petition comes on to be heard upon the pleadings and proofs therein; and, after hearing the arguments of counsel, the court takes the same under advisement, briefs to be filed within ten days.

143 Afterward, to wit, on the third day of September, 1890, Judge Gresham delivered an opinion in said entitled cause; which said opinion is in the words and figures following, to wit:

Opinion.

The order appointing the receiver was not broad enough to authorize him to enter into the contract of lease, and the lease was never reported to or confirmed by the court.

It is true that from time to time the receiver's accounts, embracing payments of rent under the lease, were submitted to the master and passed by him, and the master's reports approved by the court;

that, however, was not such a confirmation of the lease as concluded the court.

Any contract entered into by the receiver not authorized by the order of appointment and not subsequently confirmed by an order of the court ended with the termination of the trust.

The intervening petition is dismissed, each party paying half the costs.

Sept. 3, 1890.

W. Q. GRESHAM.

144 Afterward, to wit, on the twenty-second day of September, in the July term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Decree.

CHARLES H. BEERS *et al.*
vs.
WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.* } In Chancery.

In the matter of the intervening petition of the Chicago Deposit Vault Company, to which John McNulta, receiver; The Wabash Western Railway Company, James F. Joy, O. D. Ashley, Thomas H. Hubbard, and Edgar T. Welles are made defendants.

This cause came on to be heard at this term upon the intervening petition of the said intervenor, the answer of the defendants, John McNulta, receiver; The Wabash Western Railway Company, James F. Joy, O. D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, and the testimony taken and reported by the master, and was argued by counsel; and the court, having fully considered the matter, doth find the equities with the defendants, and that the said intervening petitioner is not entitled to the relief prayed for in its said intervening petition.

It is therefore ordered, adjudged, and decreed that said intervening petition be dismissed and said intervenor pay one-half the costs of this proceeding, and that the said defendants last above
145 mentioned pay the other half thereof, to be taxed by the clerk of this court.

And thereupon said intervenor prays an appeal to the supreme court, and the same is allowed it upon filing a bond to said respondents in the penal sum of five hundred dollars, conditioned for the payment of costs according to law and the rule in such case provided, with surety to be approved by the clerk of this court; and it is further ordered that in making up the transcript of the record herein upon such appeal the clerk embody the orders and other proceedings of record in the above-entitled case and the other causes mentioned in said petition and amended petition and the answer thereto, including the receiver's and master's reports read on the hear-

ing herein, or such parts thereof as counsel for said intervenor may request to be so embodied, and also all orders relating to the discharge of Receivers Cooley and McNulta.

146 Afterward, to wit, on the twenty-seventh day of October, 1890, there was filed in said clerk's office a bond in said entitled cause; which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, The Chicago Deposit Vault Company, as principal, and William E. Hale, as surety, are held and firmly bound unto John McNulta, receiver; The Wabash Western Railway Company, James F. Joy, O. D. Ashley, Thomas H. Hubbard, Edgar T. Welles, and The Wabash Railway Company, and to each of them, in the sum of five hundred (500) dollars, lawful money of the United States, to be paid to the said obligees, their certain attorney, successors, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twentieth day of October, A. D. 1890.

Whereas lately, at a term of the United States circuit court for the northern district of Illinois, in a suit depending in said court between said Chicago Deposit Vault Company, petitioner, and said obligees, respondents, a decree was rendered against said petitioner; and the said petitioner having obtained an appeal to reverse said decree

147 in the aforesaid suit in the Supreme Court of the United States to be held at Washington on the second Monday of October, A. D. 1890, and thereafter:

Now, the condition of the above obligation is such that if the said appellant shall prosecute its said appeal to effect and answer all costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[SEAL.] THE CHICAGO DEPOSIT VAULT COMPANY,
By W. K. NIXON, *Its President.*
WILLIAM E. HALE. [SEAL.]

Approved.
WM. H. BRADLEY, *Clerk.*

(Endorsed:) Filed Oct. 27, 1890. Wm. H. Bradley, clerk.

148 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be true and correct copies of a part of the bill filed June twenty-fifth, 1886; of the order entered of record December twenty-first, 1886; of a part of the receiver's report filed

March eighteenth, 1887; of the orders entered of record April fourth and thirteenth, 1887; of a part of the receiver's report filed April thirteenth, 1887; of the master's report filed May tenth, 1887; of the order entered of record May twenty-sixth, 1887; of a part of each of seven receiver's reports filed December thirtieth, 1887; of a part of each of the receiver's reports filed January twenty-fifth, February twenty-eighth, March twenty-sixth, April twenty-sixth, May twenty-third, June twenty-first, July nineteenth, August twenty-first, September twenty-fifth, and October sixteenth, 1888; of the order entered of record October nineteenth, 1888; of a part of each of the receiver's reports filed December first and twenty-eighth, 1888, and January seventeenth, 1889; of the order entered of record January thirty-first, 1889; of the master's report filed March twenty-third, 1889; of a part of each of the receiver's reports filed March twenty-eighth, April eighteenth, June first, and June nineteenth, 1889; of the orders entered of record June twentieth and twenty-fourth, 1889, and of a part of the receiver's report filed August twenty-ninth, 1890;

149 also a true and complete transcript of the record of all the proceedings had in said court in the matter of the intervening petition of the Chicago Deposit Vault Company. Each and all of said files, copies, and docket entries so referred to are correctly copied and transcribed from their respective originals in the cause of Charles H. Beers *et al.*, complainants, and The Wabash, St. Louis and Pacific Railway Company *et al.*, *are* defendants, as the same appear from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, northern division, this twenty-ninth day of October, 1890.

WM. H. BRADLEY, *Clerk.*

In the Supreme Court of the United States. October Term, A. D. 1890.

THE CHICAGO DEPOSIT VAULT COMPANY, Appellant,
vs.
JOHN MCNULTA, Receiver; THE WABASH WESTERN RAILWAY Company, James F. Joy, O. D. Ashley, Thomas H. Hubbard, Edgar T. Welles, and The Wabash Railway Company, Appellees.

Appeal from the circuit court of the United States for the northern district of Illinois.

And now comes said appellant, by George L. Paddock, its

150 solicitor and counsel, and says that in the above and foregoing record there is manifest error, in this, to wit:

That the said circuit court erred in its aforesaid opinion in holding that the order appointing the receiver did not authorize him to enter into the contract of lease in controversy, and erred in holding

that such lease was never reported to or confirmed by the court, and erred in holding that the action of the court and the master in chancery upon the receiver's reports and accounts was not a sufficient confirmation of such lease;

And for that the said circuit court erred in its aforesaid order in holding that the equities were with the defendants to the aforesaid intervening petition of appellant, and in holding that appellant was not entitled to the relief prayed in its said petition, and in ordering and decreeing that such petition be dismissed, and that petitioner pay one-half the costs, and in not granting the relief prayed for in said petition, and finding and decreeing for said peti-
151 tioner; and for the above errors and other manifold errors, apparent upon said record, this appellant prays the judgment and decree of said Supreme Court that the said final decree be reversed and said cause remanded to the said circuit court for the northern district of Illinois for such further proceedings as unto equity may appertain.

And for the above and for such other judgment as may be lawful and in accordance with equity appellant does and will ever pray, etc.

GEO. L. PADDOCK,
Solicitor and of Counsel for said Appellant.

152 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To John McNulta, receiver; The Wabash Western Railway Company, James F. Joy, O. D. Ashley, Thomas H. Hubbard, Edgar T. Welles, and The Wabash Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1890, and following days, pursuant to an order allowing an appeal, and a bond thereupon, in a certain case in equity, wherein The Chicago Deposit Vault Company was petitioner and you, the said McNulta *et al.*, were respondents, which bond was filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein said appeal was prayed from a decree dismissing the intervening petition of the said Chicago Deposit Vault Company, appellant in said cause, on the twenty-third day of September, 1890, to show cause, if any there be, why the said decree mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, judge, this 5th day of November, in the year of our Lord one thousand eight hundred and ninety (1890).

H. W. BLODGETT, *Judge.*

I hereby accept service of the above citation this 6th day of November, A. D. 1890.

G. B. BURNETT,
Att'y for Def'ts.

[Endorsed:] No. 1544. Supreme Court of the United States. 1890, October term. The Chicago Deposit Vault Company *vs.* John McNulta, receiver, *et al.* Citation to October term, A. D. 1890. Filed Nov. 26, 1890.

Endorsed on cover: N. Illinois C. C. U. S. No. 1544. The Chicago Deposit Vault Company, appellant, *vs.* John McNulta, receiver; The Wabash Western Railway Company, James F. Joy, O. D. Ashley, Thomas H. Hubbard, Edgar T. Welles, and The Wabash Railway Company. Filed November 7, 1890.

345

Office Supreme Court U. S.
FILED.
JAN 8 1894
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1893.

NO.

THE CHICAGO DEPOSIT VAULT COMPANY,

Appellant,

vs.

JOHN McNULTA, Receiver, THE WABASH WESTERN RAILWAY COMPANY, JAMES F. JOY, O. D. ASHLEY, THOMAS H. HUBBARD, EDGAR T. WELLES and THE WABASH RAILWAY COMPANY,

Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR APPELLANT.

GEORGE L. PADDOCK,
HIRAM T. GILBERT,
ATTORNEYS FOR APPELLANT.

BARNARD & GUNTHORP, PRINTERS, CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1893.

No.

THE CHICAGO DEPOSIT VAULT COMPANY,

Appellant,

vs.

JOHN McNULTA, Receiver, THE WABASH WESTERN RAILWAY COMPANY, JAMES F. JOY, O. D. ASHLEY, THOMAS H. HUBBARD, EDGAR T. WELLES and THE WABASH RAILWAY COMPANY,

Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Brief and Argument for Appellant.

On December 16, 1886, at the suit of Charles H. Beers, the Circuit court of the United States for the Northern district of Illinois, entered an order (Rec., 5–12) appointing Thomas M. Cooley receiver of the Wabash, St. Louis and Pacific Railway Company, and of all of its property covered by and embraced in the mortgage for the foreclosure of which the suit was instituted. The order (Rec., 7.) directed the receiver to take possession

of the mortgaged property and to manage and operate the railroad, preserve and protect all said property * * * acting in all things under the order of this court, and authorized him, among other things, "to make all "contracts that may be necessary in carrying on the busi- "ness of said railroad, subject to the supervision of the "court."

On December 31, 1886, being desirous of obtaining suitable general offices in Chicago for the transaction of the business of the railroad, the receiver entered into negotiations with the Chicago Deposit Vault Company, which resulted in the execution of a lease (Rec., 79–89) from that company to him of a suite of rooms in the Rialto Building. The term of the lease was from January 1, 1887, to April 30, 1891, a period of four years and four months, the yearly rental being $10,500 payable in installments of $875 monthly in advance, and there being a provision that the lease might be canceled on May 1, 1888, by the receiver giving notice to that effect on or before February 1, 1888.

In pursuance of this lease Cooley, as receiver, entered into possession of the rooms and continued to occupy them until his resignation in April, 1887. He paid the stipulated rent regularly during that time, took credit therefor in his reports of receipts and disbursements (Rec., 13–17), which reports were referred to the master, who, after due examination recommended their approval (Rec., 19), and this recommendation of the master was adopted by the court and the reports were approved accordingly. (Rec., 21.)

These monthly items of rent were entered in the receiver's reports, under "operating expenses," as "rent of "general offices, $975.00."

Upon the resignation of Cooley the court appointed John McNulta his successor, and he took possession of and continued to occupy the rooms until July 31, 1889, about which time the railroad was turned over to the purchasers at the foreclosure sale. He paid the stipulated rent regularly during that time, took credit therefor in his monthly reports of receipts and disbursements (Rec., 23–56, 60–66, 95) which reports were referred by the court to the master who, after due examination, recommended their approval (Rec., 58) and this recommendation of the master was adopted by the court and the reports were approved accordingly. (Rec., 70, 97.)

On June 20, 1889, the court entered an order directing the receiver on July 1, 1889, or as soon thereafter as the purchasers should desire, to turn over the property to them, which order (Rec., 68) contained the following provision:

"But this order is made, and the surrender and de-
"livery of possession by the receiver shall also be made
"* * * subject also to the power and right of
"this court to consider and determine all questions which
"have heretofore arisen or shall hereafter arise herein
"concerning expenses of this cause or of the receiver-
"ship herein, concerning claims against said receiver or
"against any of the property now in his possession as re-
"ceiver, and concerning allowances to counsel or to
"parties, and to charge upon or against said property any
"amounts at any time deemed by this court proper to
"be charged upon it, and this court hereby re-
"serves full power and right to consider and determine
"all such questions, to make any charges which it deems
"proper against said property now in the possession of
"said receiver, notwithstanding the surrender thereof, and

"to resume possession of all or any of said property, if "necessary, at any time hereafter, and to place said prop- "erty again in the possession of a receiver, and to resell "or otherwise dispose of the same for the purpose of se- "curing compliance with any orders which it shall make "in this cause."

On June 27, 1889, McNulta gave the Chicago Deposit Vault Company notice in writing that from and after August 1, 1889, he would not need the rooms in question, but that he would surrender possession of them and pay no rent after that date. (Rec., 75.)

On June 29, 1889, the Chicago Deposit Vault Company filed, in the suit of Beers, an intervening petition (Rec., 72–78), setting up the execution of the lease, the taking possession and occupancy of the rooms under it by the receivers, Cooley and McNulta, and the payment of rents to that time. It also alleged the giving, by McNulta, of the notice of his intention to surrender possession and cease paying rent on July 31, 1889, insisted that the receiver's claim of right to surrender the lease was unjust and inequitable, and prayed that he might be restrained from so doing, and required to abide by and perform it.

To this petition the receiver and the purchasers filed an answer (Rec., 92–94), admitting the execution of the lease by Cooley as receiver, but averring that he had no power, without the approval of the court, to bind the court or the funds of the receivership beyond the time that the premises should be necessary for the carrying on of the business of operating the property under the receivership, and that the lease was terminated by the giving of the notice.

This answer states, also: That on July 1, 1889, the receiver "did turn over all of said property to said "Wabash Western Railway Company, as agent of said "purchasing committee," and "that said premises were "leased by said Cooley for the purpose of enabling him, "as receiver, to carry on the business of operating the "property of the Wabash St. Louis and Pacific Railway "Company," and "that, on the 18th day of June, 1889, "said John McNulta, Receiver, who had become the "successor of said Cooley, was ordered by the court to "turn over the property which was the subject of such "receivership to said purchasing committee, and that "thereupon said McNulta, having no further use for said "leased premises, gave the notice to said intervenor, as "stated and charged in said intervening petition."

On April 5, 1890, a supplemental petition (Rec., 101–104) was filed by the intervening petitioner, setting forth that, since the filing of the original petition, there had accrued as rental, under the lease, the sum of $7,875.50, which sum was due and owing the petitioner, that the premises were still in the possession and under the control of the lessee or its assigns, and that petitioner had refused to accept a surrender of the same, although it had been at all times and was then ready and willing to act as agents of the lessee in reletting the premises or any part thereof for the benefit of the lessee or its assigns.

Evidence was thereupon taken before the master and reported to the court. (Rec., 106-130.) Proof was made of the execution of the lease, the possession, and payment of rent by the receivers under it, and the approval of the receiver's accounts showing payments of rent. It was also shown that the provision of the lease, including the

term specified, were as reasonable as the receiver could have made. Upon the hearing the court dismissed the petition and filed the following opinion:

"The order appointing the receiver was not broad "enough to authorize him to enter into the contract of "lease, and the lease was never reported to or confirmed "by the court.

"It is true that from time to time the receiver's ac- "counts, embracing payments of rent under the lease, "were submitted to the master and passed by him, and "the master's reports approved by the court. That, "however, was not such a confirmation of the lease as "concluded the court.

"Any contract entered into by the receiver not au- "thorized by the order of appointment, and not subse- "quently confirmed by an order of the court ended with "the termination of the trust.

"The intervening petition is dismissed, each party pay- "ing half the costs."

From this order the present appeal is prosecuted by the Chicago Deposit Vault Company, and the following errors are assigned:

1. The Circuit court erred in holding that the order appointing the receiver did not authorize him to enter into the contract of lease in controversy.

2. The Circuit court erred in holding that such lease was never reported to or confirmed by the court.

3. The Circuit court erred in holding that the action of the court and the master in chancery upon the receiver's reports and accounts was not a sufficient confirmation of such lease.

4. The Circuit court erred in holding that the equities were with the defendants to the intervening petition.

5. The Circuit court erred in ordering and decreeing that such petition be dismissed, and in not granting the relief prayed for in said petition.

POINTS AND AUTHORITIES.

I.

The lease was a contract proper for the receiver to make, and one which, if brought to the attention of the court at the time it was made, would not have been disapproved.

II.

The lease was valid in the absence of an express disapproval by the court.

Cowdrey v. *Railroad Co.*, 1 Woods, 336.
Vanderbilt v. *Central R. R. Co.*, 43 N. J. Eq., 669.
Field v. *Herrick*, 101 Ill., 110.

III.

Even if the receiver exceeded his authority in making the lease it was rendered valid by subsequent ratification by the court.

Ewell's Evans on Agency, 62, 63, 70.
Marshall Co. v. *Schenck*, 5 Wall., 772.

Smith v. *U. S. Express Co.*, 135 Ill., 279, 280.
Fisher v. *Attleborough School District*, 4 Cush., 494.
Cowdrey v. *Railroad Co.*, 1 Woods, 336.
Drakely v. *Gregg*, 8 Wall., 242.
Stark v. *Starr*, 94 U. S., 477.
Connett v. *Chicago*, 114 Ill., 239.
Ward v. *Williams*, 26 Ill., 451.
Foster v. *Rockwell*, 104 Mass., 167.
Harrod v. *McDaniels*, 126 Mass., 413.
Sartwell v. *Frost*, 122 Mass., 184.
Whitbread v. *Jordan*, 1 You. & Coll. Exch., 303.
Broom's Maxims, p. 944.

IV.

The parties interested in the foreclosure suit, the purchasers, the receiver and the court itself, are estopped from insisting upon the invalidity of the lease.

Rogers v. *Burlington*, 3 Wall., 654.
Ottawa v. *First Nat. B'k*, 105 U. S., 342.
Anderson Co. v. *Beal*, 113 U. S., 227.

V.

The lessor is entitled to the payment of the rent stipulated in the lease.

ARGUMENT.

I.

THE LEASE WAS A CONTRACT PROPER FOR THE RECEIVER TO MAKE, AND ONE WHICH, IF BROUGHT TO THE ATTENTION OF THE COURT AT THE TIME IT WAS MADE, WOULD NOT HAVE BEEN DISAPPROVED.

That it was necessary for the receiver to have offices for the transaction of the business of the railroad, and that the rooms in question were proper and suitable for such purpose and not unreasonably expensive, is not disputed, and could not be successfully in view of the fact that during the two years and seven months that receivers Cooley and McNulta occupied them and paid the rent out of the trust fund, no objection thereto was raised by any of the parties who, as bondholders or otherwise, were interested in the property and naturally desirous of a prudent and economical management thereof by the receivers. The objection to the lease, and the only objection made, is that its term was not limited to the date when the receivership should terminate.

This objection will, upon consideration, appear untenable, for it is based upon the erroneous assumption first, that the receiver was able to secure a lease of suitable rooms for offices for any length of time, whether short or long, that might suit his convenience; second, that the securing of the lease terminating at the close of the receivership would have been the exercise of good business judgment by the receiver; and third, that the rooms leased

were necessary solely for the purposes of the receivership and could not be availed of by the purchasers in the subsequent operation of the railroad.

Although a receiver may limit the amount of his purchases of ordinary commodities like coal, wood and iron, to suit his convenience, yet when he sets about securing a lease of offices he cannot dicate to the lessor the term for which it shall be made. On the contrary he must submit to a lease with such stipulations and provisions as circumstances enable the lessor to insist upon.

In this case, as the evidence shows (Rec., 109), the lessor, prior to the time when Receiver Cooley began his negotiations, had made no leases of offices to any of its tenants for a less term than five years, and was not then disposed to make an exception in his favor. The only concession he could secure was a provision that the lease should expire in four years and four months, and that it should give him the option to terminate it on May 1, 1888, by giving the lessor three months' notice. It does not appear, and it certainly is not to be presumed, that he could have secured a lease of suitable offices for a shorter term. Indeed it needs no evidence, but only good business sense, to teach us that owners of valuable buildings suitable for office purposes in a city like Chicago are averse to making leases of short duration and the consequent rapid changing of lessees. Such a method of leasing is not only troublesome to the owner, but is unprofitable and tends to bring undesirable tenants. It is likewise objectionable to a tenant whose business is respectable and not of a merely temporary character. It is not, therefore, to be supposed the receiver, had he so desired, could have secured a lease which should expire at the termination of his receivership. In any event the

act that he did not secure a lease that would so terminate does not prove or tend to prove there was any impropriety in his action, much less is it to be regarded as a circumstance which, *per se*, stamps the lease as one improper to be made.

Even if the receiver in this case had been able to secure suitable offices under a lease from month to month, such a lease would have subjected him to the inconvenience, annoyance and expense of moving his offices, in case the lessor should at any time give him notice to vacate, unless the lessor had submitted to stipulate that the option to terminate the tenancy at any time before the termination of the receivership should be one to be exercised by the receiver alone, a stipulation which, it is needless to add, would rarely be assented to by any lessor of ordinary sense and business capacity. Furthermore, a lease from month to month, or for any short period, would undoubtedly have resulted in the payment of a very much larger rental than that provided in the lease in question. Indeed, it can scarcely be doubted that the payments of rent for two years and seven months (being the time the receiver actually occupied the offices), if made under a lease from month to month, would have greatly exceeded the entire amount stipulated for in the lease under consideration.

In order to secure offices at a moderate and reasonable rental, it was necessary for the receiver to take a lease for the term usually provided in other leases. While, if it were practicable to obtain a shorter lease, a lease for a term of four years and four months might seem an unreasonably long one to be made by a receiver whose trust was subject to being closed at any time, it does not so appear in the light of the history of other similar receiver-

ships It is safe, we think, to say it was not greatly in excess of the average duration of railroad receiverships. Although it did finally turn out that it was one year and nine months longer than the continuance of the trust, it authorized the receiver to sublet or assign, when the proposed sub-tenant or assignee and his business were unobjectionable, and by the exercise of that right the receiver might reasonably hope to avoid any loss that might result from the rooms being unoccupied during the unexpired term, in case the purchasers of the railroad should not find it convenient to use them for office purposes. In view of all the facts, the conclusion seems inevitable that the receiver, in procuring the lease in question, exercised better business judgment than he would have exercised by securing a lease from month to month or other short period, with all its attendant inconveniences and additional expense.

In the case of an individual or corporation other than a railroad corporation, the appointment of the receiver is usually the termination of the business, and the sole duty of the receiver is to reduce the assets of the insolvent to money. Consequently offices leased by a receiver in such a case would ordinarily be of no benefit to the purchaser of the property after the termination of his trust. But in the case of a railroad it is otherwise, for it is absolutely necessary that its business should be continued and that, wen sold, it should be turned over to the purchaser as a going condern. (*Vanderbilt* v. *Central R. R. Co.*, 43 N. J. Eq., 682.) The same reason which makes it expedient it should be delivered to the purchaser fully equipped with rolling stock, a competent force of employes, etc., would make it desirable that it should be delivered to him with a suitable general office for the

transaction of its business. A lease of rooms for offices of which, at the termination of the receivership, there is an unexpired term, would be as available to the purchaser of the property as would be necessary railroad supplies which might not be wholly exhausted, or an engine or other rolling stock which might not be wholly worn out.

When all the material circumstances are considered, the objection that the receiver did not procure a lease which would terminate with his receivership is wholly without force. The sole test that can be applied to the action of the receiver is, did he exercise the prudence that a good business man would have exercised under the same circumstances? Applying that test to the conduct of Receiver Cooley in entering into the lease in question, there can be no ground for the assumption that the court, if applied to in advance, would not have approved his action. The lease was one that it was necessary and prudent for the receiver to make. It was made in the utmost good faith, and the court, had it been asked so to do, would have approved it.

II.

THE LEASE WAS VALID IN THE ABSENCE OF AN EXPRESS DISAPPROVAL BY THE COURT.

The terms of the order appointing the receiver authorized him "to make all contracts that may be necessary "in carrying on the business of said railroad, *subject to* "*the supervision of this court.*" The requirement that his acts should be subject to the *supervision* of the court was likewise imposed with respect to his bringing suits for the recovery of the property of the company and also

with respect to his employment of attorneys, agents and servants, and the fixing of their compensation. The manner in which this supervision should be exercised is not specified in the order. In a somewhat analogous case, *Cowdrey* v. *The Railroad Co.*, 1 Woods, 336, Mr. Justice Bradley held that, "except in extraordinary cases the "submission by the receiver of his accounts to the master "at frequent intervals, whereby the latter may ascertain "from time to time the character of the expenditures "made, and disallow whatever may not meet his approval, "will be regarded as a sufficient reference to the court for "its ratification of the receiver's proceedings."

It is evident it was not contemplated that it should be essential to the validity of every contract, whether of employment of an agent, or purchase of supplies or otherwise, that it should be authorized and approved by the court in advance of its making or execution. Such a course would have prevented the receiver from the employment of a section hand or day laborer without a previous order of court sanctioning the term of the employment and amount of wages to be paid, and would have rendered the labors of the receiver in procuring orders of court fully equal to those of operating and managing the railroad. No other reasonable construction can be given the order than as conferring upon the receiver power to make contracts necessary in carrying on the business of the railroad with a reservation of the right on the part of the court to disapprove of such as should appear to be unreasonable or to have been improvidently made, when called to its attention, such right, however, to be exercised in a spirit of fairness and justice to the other contracting party. In other words, it was intended that all such contracts, when made in good faith and not in them-

selves unreasonable, should be deemed valid and binding unless expressly disapproved by the court. This view seems to have the sanction of very high and respectable authority.

In *Vanderbilt* v. *Central R. R. Co.*, 43 N. J. Eq., 669, a receiver had been appointed by the court of chancery over the Central Railroad Company of New Jersey, an insolvent railroad corporation. By statute it was provided that, if the property of an incorporated railroad company passed into the hands of a receiver, under the order of a chancellor in an insolvent proceeding, the receiver should operate the road for the use of the public subject to the order of the chancellor. The order of appointment authorized him "in the exercise of a sound discretion, to "continue the operation of the railroads owned or oper-"ated by the Central Railroad Company of New Jer-"sey," and directed him, for that end, among other things, to contract, purchase and pay for such materials and supplies as might seem to him necessary and proper in the exercise of a wise discretion. In pursuance of this order the receiver made contracts for the purchase of railroad ties and lumber. While those contracts were in progress of performance the receiver died. Subsequently a new receiver was appointed who repudiated any obligation to receive and pay for the materials contracted, whereupon the parties with whom the contracts were made petitioned the court for their enforcement or for an award of damages for their non-fulfillment. In delivering the opinion of the court, MAGIE, J., in discussing the powers of a receiver, said:

"Without other express authority, it is plain that for "the proper performance of the duties thus imposed on "the court, and to be performed by its officer, the latter

" must take charge of all the property of the corpora-
" tion, and so manage and preserve it as to enable it to be
" disposed of most advantageously. With respect to the
" property of ordinary corporations, this duty can be fully
" performed, by merely storing, insuring and otherwise
" guarding the property and preserving its value until a
" sale can be judiciously made. Ordinarily, as was well
" observed by the vice-chancellor, there is no necessity
" or propriety in continuing the business of such corpora-
" tions, and an early conversion of their assets into
" money, and its distribution among the creditors, is the
" plan of wisdom. But if the business of an insolvent
" railroad be arrested and its operation stopped, it is clear
" that its property would not be preserved in a condition
" likely to realize its full value. On the contrary a cessa-
" tion of its business would be fatal to the interests of all
" concerned. In the absence of any express enactment,
" it seems to me the legislation which gives authority to
" deal with and convert into money such property, must
" be held to give, by implication, all needful authority to
" so run the road as to preserve its traffic and connections.
" The duty imposed requires the road to be so managed
" that, when ready to be disposed of, the lessee or pur-
" chaser will acquire, not merely the road-bed, rails, loco-
" motives and cars, but a going concern actually engaged
" in business. This view of a receiver's powers and
" duties was taken by the Supreme court of the United
" States. *Barton* v. *Barbour*, 104 U. S., 126; *Wallace*
" v. *Loomis*, 97 U. S., 146."

With respect to the power of the chancellor over the contracts of the receiver the learned judge said:

" I cannot find in the legislation in question any coun-
" tenance for the notion that the contracts of a receiver,

"made under either the implied or express authority con-
"ferred, may be revoked or annulled at pleasure by the
"chancellor. Doubtless the chancellor has power to re-
"tain in his hands the administration of such a trust, and
"to personally direct and order each contract into which the
"receiver should enter. But it would obviously be imprac-
"ticable to adopt such a course in running a railroad. To
"select and employ the necessary subordinates, to fix the
"term of service and the amount of wages, to contract
"for and purchase materials and supplies, and to antici-
"pate in these respects the future needs of one of these
"gigantic corporations by express orders in each case,
"would require the whole time of the chancellor, and
"could never have been intended by this legislation. It
"must have been contemplated that in the performance
"of these multifarious duties some degree of discretion
"might be accorded to the receiver. Whether a power
"to exercise such discretion would not be assumed to ex-
"ist in every case without a special order, need not be
"considered, for it is clear that the chancellor may accord
"such discretionary power to a receiver by a general or-
"der, as was made in this case.

With respect to the power and duty of the court upon applications for the enforcement of such contracts the learned judge, among other things, further said:

"If the contract has been completely performed, and
"its performance accepted by the receiver, and the claim
"is merely for compensation, relief of that nature would
"seem necessarily to be awarded, unless the applicant
"should appear to have dealt fraudulently or collusively
"with the receiver to the detriment of the trust. Even if,
"in the judgment of the chancellor, the contract was im-
"provident and unreasonable, unless the contractor should

" appear to have contracted with notice of the improper " character of the contract, no just reason could be given " for debarring him from the agreed on compensation, " which the receiver might, for his negligence or miscon- " duct, be required to pay.

" But if the contract has not been performed, and the " applicant seeks a direction for its performance or dam- " ages for its non-performance, what course is to be taken " if the contract be found to be improvident and unrea- " sonable, although it does not appear that the contractor " had notice that it was of that character? In such case, " to direct the performance of the contract, or to award " damages for its non-performance, would injure and de- " spoil the trust for the mere benefit of the contractor. " The course of equity, under such circumstances, seems " plain. The contractor with a receiver must be assumed " to know that if he seeks to enforce his contract, it must " come under the scrutiny of a court of equity, and if it " there appears to be injurious to the trust managed by " that court, it would be impossible for that court to carry " it out. He cannot complain, therefore, if the court de- " cline to direct such a contract to be performed, or if it " has been repudiated by the receiver, to award damages- " in the ordinary sense of the term, for its non-perform, " ance.

" But if the contractor has, in good faith, entered into " a contract with a receiver clothed with discretionary " powers, and, before the unreasonableness or improvi- " dence of such a contract may have been brought to his " notice or judicially determined, has made preparations " for its performance, and has therein expended money " or contracted obligations, which, if the contract goes " unperformed, he cannot, with reasonable diligence, be

" reimbursed or protected against, then it would be obvi-
" ously inequitable to turn him away to submit to such
" loss, or to leave him to such redress as he might be en-
" titled to against the receiver. If he has acted in good
" faith, then, although he may not be entitled to enforce
" his contract, because the receiver has acted improvi-
" dently, yet he ought not to be allowed to suffer actual
" loss, but should be made whole; and since the receiver
" merely represents the fund, he should be made whole
" out of the fund. If the contract of the receiver re-
" quired it, the court might compel him to reimburse the
" fund for what would thus be taken from it."

The points decided in the case cited may be summarized as follows:

First. Power conferred upon a receiver by an order of court to make such contracts as may seem to him necessary in the exercise of a wise discretion for the management of the business of a railroad, authorizes him to enter into such contracts without a previous special application to the court.

Second. Contracts thus made cannot be revoked or annulled at pleasure by the chancellor.

Third. When any such contract has been fully performed by the other party, then, even though it might seem improvident or unreasonable, his right to compensation cannot rightfully be denied unless it appears he has dealt fraudulently or collusively with the receiver to the detriment of the trust.

Fourth. If the contract has not been performed, and its specific execution, or damages for its non-performance, is sought, relief may be denied, if the contract is improvident or unreasonable.

Fifth. When an improvident or unreasonable contract has been made, yet, if the contractor has acted in good faith, and incurred expenditures on account thereof before notice or a judicial determination of its improvidence or unreasonableness, he should not be permitted to suffer actual loss, but should be made whole out of the trust fund.

The rules thus expressed are manifestly just and equitable, and no reason can be perceived why they should not be applied in the case at bar. The order conferring power upon the receiver in this case is not essentially different from that in the case cited. The provision that the making of contracts should be "subject to the super- "vision of the court" was one that the law would have implied if it had not been expressed. It was nothing more than a notice that the court reserved to itself the power to protect the trust fun against improvidence and unreasonable acts of the receiver.

The contract here in question falls within the class above described as those which the contractor has fully performed. The execution of the lease and the delivery of possession to the receiver of the offices leased, was as full and complete a performance by the lessor as would have been the delivery by the contractor of a quantity of railroad materials, part of which might have been still on hand and unused at the termination of the receivership. Consequently the lessor is entitled to an award of the rent for which the lease provides. This would be true even if the lease might now seem unreasonable. It is still more just and equitable where, as here, the lease appears to have been one which was entirely proper for the receiver to have made, and in the making of which there was the utmost good faith on the part of the lessor.

In *Cowdrey* v. *The Railroad Co.*, 1 Woods, 336, Mr. Justice BRADLEY, in discussing the powers of a receiver in such a case, among other things, said:

"It may be laid down as a general proposition that all "outlays made by a receiver in good faith, in the ordi- "nary course, with a view to advance and promote the "business of the road, and to render it profitable and "successful, are fairly within the line of discretion which "is necessarily allowed to a receiver entrusted with the "operation and management of a railroad in his hands. "His duties and this discretion with which he is invested "are very different from those of a passive receiver, ap- "appointed merely to collect and hold moneys due on "prior transactions, or rents accruing from houses and "lands. And to such outlays in ordinary course, may "properly be referred, not only the keeping of the road, "buildings and rolling stock in repair, but also the pro- "viding of such additional accommodation, stock and "instrumentalities as the necessities of the business may "require, always referring to the court, or to the master "appointed in that behalf, for advice and authority in any "matter of importance, which may involve a considerable "outlay of money in lump."

It was suggested upon the argument of the case at bar in the court below that what is said by this court in the case cited simply prescribed what expenditures the court would recognize as legitimate after they were made, and furnished no support for the claim that the receiver may make a contract, without the authority of the court, which will bind the trust. While, however, there is a distinction in form between the approval of the performance by the receiver of a contract after it is completed, and the approval of the contract before its performance, there is

no difference in substance. A contract which ought not to have been approved at the time it was made, ought not to be approved after its performance.

As we have already suggested, however, the order appointing a receiver and conferring upon him authority to act, did not make it essential to the validity of every contract that it should be authorized and approved by the court in advance. It was evidently contemplated that contracts reasonably necessary for the performance of the duties imposed should be deemed valid until disapproved by the court.

The terms of this order are somewhat analogous to a statute of Illinois (R. S. 1874, Sec. 23, Ch. 24) which declares that a guardian may lease the real estate of his ward upon such terms and for such length of time, not exceeding the majority of the ward, as the County court may approve. In *Field* v. *Herrick*, 101 Ill., 110, it was contended that a lease made by a guardian was void unless approved by the Probate court. But the Supreme court held otherwise and said:

"But is a lease made by a guardian void unless it "is approved by the Probate court? We do not think "such a lease can be held void. Sec. 23, Chap. 64, Rev. "Stat. 1874, p. 561, declares that the guardian may "lease the real estate of the ward upon such terms and "for such length of time, not exceeding beyond the ma- "jority of the ward, as the County court shall approve. "All that can reasonably be claimed under this statute is "that a lease made by a guardian may, when it is sub- "mitted to the Probate court, be rejected and set aside "by the court. Such a lease is not however, void, but "voidable merely—it may be regarded as binding until "the court should examine it and refuse approval."

The same construction should be given to the order of the court in this case, and a lease or other contract not unreasonable or improvident on its face should be held valid and binding in the absence of any action of the court by which it was disapproved.

As the order of the court did not require that a lease or contract, before becoming operative, should be submitted to and expressly approved by the court, but simply reserved to the court such power of supervision as would enable the court to protect the parties interested from unreasonable or improvident contracts of the receiver, the lessor, the lease being fair and reasonable, was not called upon to obtain an order of court approving it, but was authorized to treat it as valid until disapproved, and as it never was disapproved, it must be regarded as valid and binding. If the parties in interest, when it was brought to their attention, considered it unreasonable, unfair or improvident, it was their duty to call it to the court's attention and have it disapproved and set aside. This they did not do. On the contrary, when, by the petition of the lessor, the lease was brought to the notice of the court, they resisted its enforcement, not because it was unjust, unreasonable, fraudulent or improvident, but solely on the technical grounds set forth in their answer (Rec., 93), that the receiver had no power to make it without the approval of the court, and that it was, therefore, not valid or binding.

Nor can it be successfully contended that the order of the court dismissing the lessor's petition was in effect a disapproval of the lease. The question presented and decided by the court was not whether the lease was voidable and ought to be disapproved as unreasonable and unjust, but it was whether it was void and not en-

forceable in any event, and the judgment of the court was not a disapproval of the lease but a determination that it was wholly invalid.

It was suggested in the court below that if a receiver may lease rooms for his accommodation for a period of five years and bind the property in his hands for the payment of the rent for that period without the order of the court, he may lease them for twenty, fifty or an hundred years, and that he might make contracts which would entirely exhaust the funds and swallow up the property. But this suggestion is wholly without force. The power of the receiver being limited to the making of contracts that are reasonably necessary and not improvident, the court is not bound to lend its sanction to or approve every contract the receiver might see fit to make, and the prudent exercise of its supervision over the conduct of the receiver would prevent calamities which would result from the imprudence or improvidence which might characterize his conduct if wholly unrestrained.

As the order of appointment authorized the receiver to make a contract of this nature without requiring a prior special application to the court for that purpose, and as the lease was not unreasonable or improvident, and was made in good faith both by the receiver and the lessor, and as the lessor has fully executed it, the demand that, after it has been allowed to remain in force for two years and seven months, it shall be annulled on the sole ground that the court, at the time of its execution, did not approve it by a special order, seems most unconscionable. It is also wholly unsanctioned by the rules adopted by courts of equity in the determination of the powers of a receiver and the rights of those with whom, in the execution of his duties, he may enter into contracts.

III.

EVEN IF THE RECEIVER EXCEEDED HIS AUTHORITY IN MAKING THE LEASE, IT WAS RENDERED VALID BY SUBSEQUENT RATIFICATION BY THE COURT.

Every monthly payment of rent made by both Cooley and McNulta was set forth in the reports made by them of their receipts and disbursements. Those reports were referred to the master who recommended their approval and they were accordingly approved by the court. The orders thus made by the court were necessarily ratifications of the lease.

That an act of an agent in excess of his authority may be ratified by his principal, and when so ratified is as binding as though originally authorized, is a familiar rule that is as applicable to acts of a receiver appointed by a court or an officer of a municipal or private corporation as to those of other agents. Any act which a court can lawfully authorize a receiver, or a municipal or other corporation can authorize its officer to do, it can also make valid by subsequent ratification. With respect to the ratification of all such acts, substantially the same rules apply as govern the ratification by any principal of the unauthorized acts of his agent, the only exception being those acts in the performance of which certain indispensable formalities are expressly required by law.

Ewell's Evans on Agency,* 62, 63.

Marshall County v. *Schenck*, 5 Wall., 772.

Smith v. *U. S. Express Co.*, 135 Ill., 279, 280.

Fisher v. *Attleborough School District*, 4 Cush., 494.

Cowdrey v. *The Railroad Co.*, 1 Woods, 336.
Ewell's Evans on Agency,* 63.
Drakely v. *Gregg*, 8 Wall., 242.
Stark v. *Starr*, 94 U. S., 477.

Such ratification need not be express. It may, like other facts *in pais*, be proven by circumstances.

Ewell's Evans on Agency, * 63.
Connett v. *City of Chicago*, 114 Ill., 239.
Marshall County v. *Schenck*, 5 Wall., 772.

In general, where an agent is authorized to do an act, and he transcends his authority, it is the duty of the principal to repudiate the act so soon as he is fully informed of what has been thus done, in his name, by the agent, else he will be bound by the act as having ratified it by implication; but where a stranger, in the name of another, does an unauthorized act, the latter need take no notice of it, although informed of the act thus done in his name, and he should only be bound by an affirmative ratification.

Ward v. *Williams*, 26 Ill., 451.
Foster v. *Rockwell*, 104 Mass., 167.
Harrod v. *McDaniels*, 126 Mass., 413.

Proof that the principal used and appropriated the property acquired by the unauthorized act of the agent is sufficient to establish a ratification.

Fisher v. *Attleborough School Dist.*, 4 Cush., 494.
Sartwell v. *Frost*, 122 Mass., 184.

It is also the rule that if the principal adopts a part of the unauthorized contract he is considered as ratifying

the whole. He cannot adopt in part and repudiate as to the residue.

Ewell's Evans on Agency, * 70.

In the light of the rules of law above stated, what is the effect that must be given to the orders entered by the court approving the reports of the receiver?

If an individual having authorized an agent to conduct a business requiring the use of offices, and especially empowered him to make all contracts that might be necessary in carrying on the business, subject, nevertheless, to the principal's supervision, should during two years and six months, repeatedly approve the accounts of such agent wherein were specified monthly payments of rent for the offices in which the business was conducted, the leasing of which the principal had never directly approved, it cannot be doubted he would be held to have ratified the lease under which such payments of rents were made. Though there would be imposed upon the party seeking to enforce the lease the burden of proving that the principal had approved it with full knowledge of all the material facts, the circumstances proven would fully justify the finding either that he had such knowledge or that his neglect of the means of acquiring knowledge was so gross as to estop him from alleging ignorance. It would severely tax the credulity of a court or jury to believe, when such facts were proven, and no fraud of the agent shown, that the principal was ignorant of the terms of the lease.

There is no reason why the same conclusion should not be drawn from the facts stated when the principal is a court and its agent a receiver. On the contrary, the peculiar relation of the court to its receiver and to the

parties litigant, furnishes an additional reason not only why such conclusion should be drawn, but also why any other conclusion should be held inadmissible.

When the principal is an individual the law imposes upon him, as a general rule, no duty of inquiry into the conduct of his agent with a view of restraining him from unauthorized acts. He may be permitted a considerable degree of negligence, without bringing upon himself the risk of being held to knowledge which he might by inquiry have obtained. He may, to a great extent, rely upon the integrity of his agent to confine himself within the scope of the authority conferred. But when the principal is a court and its agent a receiver, the case is otherwise. A court which has appointed a receiver has imposed upon it the duty of a rigid scrutiny of all his acts, and particularly when such receiver claims credits in his accounts, it is the duty of the court, before allowing such credits, to fully inquire into all circumstances affecting their propriety, and it is permissible to apply the rule stated by Baron Alderson in *Whitbread* v. *Jordan*, 1 Yon. & Coll., Exch., 303, that "when a party having "knowled ge of such facts as would lead any honest man, "using ordinary caution, to make further inquiries, does "not make, but on the contrary studiously avoids making "such obvious inquiries, he must be taken to have notice "of those facts which, if he had used such ordinary dili-"gence he would readily have ascertained." Hence it follows, that the approval of a receiver's report and the allowance of the credits claimed must create the presumption of knowledge on the part of the court of all the facts which a proper inquiry into such credits would have disclosed, for it is not permissible to assume that the court has not properly performed the duty imposed upon

it by law. This principle is well stated in Broom's Maxims, page 944, where it is said:

"Where acts are of an official nature, or require the "concurrence of official persons, a presumption arises in "favor of their due execution. In these cases, the ordi- "nary rule is, *Omnia præsumuntur rite et solemniter esse* "*acta donec probetur in contrarium*—everything is pre- "sumed to be rightly and duly performed until the con- "trary is shown. The following may be mentioned as "general presumptions of law illustrating this maxim:— "That a man, acting in a public capacity, was properly "appointed and is duly authorized to do so; that, in the "absence of proof to the contrary, credit should be given "to public officers who have acted, *prima facie*, within "the limits of their authority, for having done so with "honesty and discretion; that the records of a court of "justice have been correctly made, according to the rule, "*Res judicata pro veritate accipitur*—that judges and "jurors do nothing causelessly and maliciously; that the "decisions of a court of competent jurisdiction are well "founded and their judgments regular; and that facts, "without proof of which the verdict could not have been "found, were proven at the trial."

It is manifest that the maxim above stated is wholly inconsistent with the assumption that the court approved the payments of rent by the receivers without knowledge of the terms and existence of the lease in question. Both the master and the court must be presumed to have performed the duty imposed upon them by law "with hon- "esty and discretion." The determination of the propriety of these payments of rent necessarily involved an investigation of the circumstances under which they were made. It devolved upon each of the receivers to show

affirmatively that each item of expenditure for which he claimed credit was one properly and legally made. To show this, it was necessary to make proof of all the material facts and circumstances connected therewith, from which facts and circumstances the master and court could determine whether the payments made were legal and proper. To assume the master and the court failed and neglected to make the proper examination, and that they approved of the payments made by the receivers without proper inquiry as to their propriety and legality, is to assume that both the master and the judge were guilty of a gross dereliction of public duty. There is no possible escape from this conclusion. Before the master could properly approve the payments for rent, it was necessary for him to him to determine the following questions:

First. Were the offices, for which the rent was paid, reasonably necessary and suitable for the business of the railroad?

Second. Did the receiver in the procuring and contracting for the use of the offices excercise the care and prudence demanded by law?

Third. Was the payment of such amount of rent as that for which credit was claimed necessary and proper?

In no other way could these questions be determiued than by proof of the entire history of the leasing by the receiver of the premises, which proof would have disclosed the terms of the lease.

If it be suggested *non constat* that the receiver disclosed the terms of the lease or that he did not justify the payment of rent by evidence which did not include proof of the lease, the answer is that to so presume is to presume the receiver was dishonest, and that he procured the approval of his report either by a *suppressio veri* or by a

suggestio falsi. This is not permissible. The receiver is himself an officer of the court as to whom, as well as to its other officers, the presumption is to be indulged that he properly performed the duty imposed upon him by law. This presumption is one that is applied to the acts of all public officers.

Connett v. *City of Chicago*, 114 Ill., 238.

It may, as a matter of fact, be possible that the master approved the receiver's reports without making the proper inquiries, but so gross a neglect of duty cannot be presumed in the absence of evidence. There being no evidence of such misconduct, the question now is, what is the conclusion drawn by the law from the judgments of approval passed by him upon the receiver's reports, which judgments by ratification became the judgments of the court. As to that there can, we submit, be but one answer consistent with the presumption of an honest and proper discharge of duty by the court, and that is that it was an approval of all the doings of the receiver which preceded, accompanied or were connected with the payments thus made, and was therefore a recognition, approval and ratification of the lease.

IV.

THE PARTIES INTERESTED IN THE FORECLOSURE SUIT, THE PURCHASER, THE RECEIVER AND THE COURT ITSELF ARE ESTOPPED FROM INSISTING UPON THE INVALIDITY OF THE LEASE.

It is not to be supposed that the parties interested in the management of the property over which the receiver was appointed, permitted the receiver to make the pay-

ments of rent without inquiry as to the circumstances under which they were made. It was a duty which they owed to themselves as well as to the court to see to it that the court was fully informed as to all facts bearing upon the propriety of the receiver's management of the property. Had there been but a single payment of rent, a failure by them to inquire into the circumstances could readily be excused. But here was an acquiescence by them for a period of two years and seven months in the occupancy by the receiver of the premises leased and the payment of the rent. The regular payments of rent reported by the receiver were ample notice to them that it was paid by him under some arrangement or contract which, if objectionable, ought to be brought to the attention of the court for its action. It should, therefore, be presumed that the parties interested, from regard for their own interests, ascertained the facts, and being satisfied with the lease made no objection. Assuming they did have knowledge of the facts, the fact that they lay by and permitted the receiver to act under and enjoy the benefits of the lease for so long a period should be held sufficient to estop them from demanding its repudiation, when to continue it in force was no longer to their interest.

It cannot be doubted that had the receiver been acting as agent for a principal who was an individual, such principal would have been estopped from repudiating the lease. If such principal should authorize an agent, subject to his supervision, to make all contracts necessary for the transaction of the principal's business and the agent in the discharge of his duty should, in his principal's name, execute a lease, which could only be binding upon ratification with full knowledge of all the facts, it could not well be insisted such principal, after approving

payments of rent for two years and seven months, should be permitted to repudiate the lease upon the mere claim that he had not been informed of its precise terms. In the absence of any showing by him of fraud or deception he would be held bound by it on the ground of long acquiescence in the acts of his agent and his own negligence in failing to make proper inquiry. A principal who wilfully neglects to make inquiry into his agent's acts and for a long period acquiesces in those acts, cannot be permitted to insist upon the benefits of an act done in excess of authority, and at the same time permit other persons to be defrauded by its partial repudiation. No reason occurs to us why the same rule should not be applied to those in whose interest a receiver is appointed.

As far as the purchasers are concerned, they occupy no better position than those who were interested in the property before the sale, for by the express terms of the order by which the property was turned over to them, any claim which could have been enforced against the receiver or the property before the sale was likewise enforceable after the sale. (Rec., 68.)

As to the receiver McNulta it is to be said that the position assumed by him was most inconsistent with equity and good conscience. Knowing, as he did, of the existence of the lease, and paying the rent under it as did his predecessor, he neglected to report it to the court for an express order of approval in any other manner than by reporting the payments of rent under it. From April, 1887, the date of his appointment until June, 1889, being more than two years, he made no suggestion to the Chicago Deposit Company that the lease was a nullity, nor did he avail himself of the provision it contained (Rec., 85) by which he was at liberty to terminate it on May 1,

1888. On the contrary, acquiescing in its provisions and apparently recognizing its validity he retained possession until June, 1889, when, because it suited his convenience or the convenience of the purchasers to repudiate it, he gave notice that he would vacate and cease to pay rent July 31, 1889. His conduct in this regard justifies the inference that, without disclosing his purpose to the lessor, he intended to occupy the premises and treat the lease as binding during the entire term if it suited his purpose to do so, or to repudiate it at any time such course might seem to his advantage. Such conduct, if indulged in by an individual acting in his own behalf, would be denounced by any respectable court of equity as dishonest and unconscionable, and we see no reason why conduct stamped as dishonest when indulged in by one acting in his own behalf, should be viewed differently when it is that of one acting as the representative of others, and particularly as the representative of a court of equity.

As to the court itself, we respectfully suggest, there is no valid reason why it should not submit itself to the application of the doctrine of estoppel. A rule which it enforces against others it should be willing to have enforced against itself. In other words, the practice of the court should conform to its precept. The fact that the court is not itself the party interested, but is merely the representative of the party litigant, furnishes no reason why the doctrine of estoppel should not be applied. This court has, in numerous cases, held that a municipal corporation is estopped by erroneous recitals made by its officers in its bonds from insisting upon their invalidity, although they were issued in violation of law. In one case it carried the doctrine of estoppel to such an extent

as to hold that a county which had paid interest on bonds for ten years and for the two years and a half between the day of the election at which their issuance was voted and their sale to the company to whom they were issued, had not enjoined their issue or use, was estopped from denying they were invalid on the ground of want of proper notice of the election.

Rogers v. *Burlington*, 3 Wall., 654.
Ottawa v. *First Nat. Bk.*, 105 U. S., 342.
Anderson County v. *Beal*, 113 U. S., 227.

If the tax-payers of a municipality can be compelled to pay bonds issued contrary to law on the grounds of an estoppel arising from the acts or the non-action of their officers, no reason is perceived why the parties to a cause, who are interested in a fund, should not be held estopped by the conduct of the court from availing themselves of a technicality to invalidate a contract of a receiver. To hold that a failure to give a notice of an election involving the issuance of bonds, which notice is required by express statute, is cured by long acquiescence of the officers who themselves have neglected the duty imposed, and that a failure of a receiver to secure an approval in advance by the court of a contract, is not cured by long acquiescence in the court in the performance of such contract, can scarcely be justified by reason.

There was nothing in the conduct of the lessor in this case that ought to deprive it of the benefit of an estoppel. It is true it might have exercised the precaution to see to it that before it delivered possession to the receiver the lease should be approved by an express order of the court. But the nature of the contract, when considered

in the light of the terms of the order, was not such as to clearly demand such approval, and even if it did, it was the duty of the receiver, and not of the lessor, to make the application to the court for that purpose, and the lessor was authorized to assume that duty would be performed by the receiver. In this particular case the receiver who made the lease was an eminent lawyer, whose high reputation both as a judge and jurist and as a man of integrity, was so wide as to be known to every intelligent man of business. He represented that he was authorized to execute the lease, and the officers of the lessor believed and trusted him. While this circumstance may not as a matter of law excuse the lessor from observing any duty imposed upon it, and it may have been bound to deal with Judge Cooley as it would with any other receiver, yet as a matter of fact, when a court appoints a man of Judge Cooley's character as receiver, it cannot expect the public to deal with him as they would with one as to whose capacity and integrity nothing is known. Taking into account the fact that the order appointing Judge Cooley, did not in express terms require his contracts to be approved in advance by the court, but only subjected them to the court's supervision, the fact that the lease was made, the rent was regularly paid in accordance with its terms for two years and four months before its validity was questioned, and the fact that the court regularly approved of these payments, the lessor was excusable for not assuming to know the law better than Judge Cooley, and for not itself procuring a special order confirming the lease. It had the right to assume that both the receiver and the court would discharge the duty imposed upon them by law, and inasmuch as the duty of this court in passing upon the re-

ceiver's accounts could not properly be discharged without a full inquiry into the terms of the lease, the approval of those accounts was, in effect, a representation to the lessor that the court had exercised the supervision referred to in its order, and that it approved of the receiver's action.

V.

THE LESSOR IS ENTITLED TO THE PAYMENT OF THE RENT STIPULATED IN THE LEASE.

As the lease was a valid and binding contract, it must be regarded in the same light as any other lease and enforced in the same way as a lease between two individuals. The court should, therefore, have ordered the payment by the receiver of the rent stipulated.

It was suggested by counsel for appellees in the court below that the lessor, when notified of the intended vacation of the rooms, took no precaution to preserve itself from loss, that it might have taken possession of the rooms, and by re-letting them to another tenant, obtained as much rent as the receiver has agreed to pay, and that therefore it is entitled to no relief. The law, however, imposed no such duty upon the lessor.

The lessor in this case was ready and willing to act as agent of the lessee in re-letting the premises. (Rec., 102.) This was all that could reasonably be required of the lessor. It was a part of the consideration upon which the receiver obtained the lease, that he should pay the rent for the entire term and take upon himself the task of subletting the rooms or assigning the lease in case he ceased to have use himself for the rooms before

the termination of the receivership. By agreeing to take a lease for four years and four months, the receiver undoubtedly secured a much more moderate rental than he could have secured had the lease been shorter, and there is no rule of law, whether it be one pertaining to the measure of damages, or otherwise, by which, after availing of the benefits of a long term lease, he can deprive the lessor of the consideration upon which those benefits were conferred. The case is simply one of a breach of contract to pay the rent, and the only way the lessor can be compensated for that breach is by a decree requiring the receiver to pay what he agreed to pay.

The claim presented by the intervening petitioner in this case is one which cannot but commend itself to the favorable consideration of a court of equity. Even if the lease were such a contract as required a special order of confirmation and the court had never ratified it, justice to the lessor as well as respect to itself would seem to require the court of equity to give its approval *nunc pro tunc*, and thus accomplish what it would have done had its action been invoked at the date of the execution of the lease. The conduct of the lessor has been characterized by the utmost good faith, and the court, it seems to us, ought to protect him against a repudiation of a fair and reasonable contract to the same extent that it would have protected him had the receiver, as well as the court itself, performed their full duty.

We do not perceive from the opinion of the Circuit court that the question of the right of the lessor to a judicial approval of the lease at the hearing in this cause was considered. The case apparently was made to turn upon the following points: 1. The form and scope of the order appointing the receiver. 2. That the con-

firmation by the court of the reports of the receivers and the master, did not conclude the court. 3. That any contract of the receiver not authorized by the order of appointment and not subsequently confirmed by the court ended with the termination of the trust.

But is there not in the nature of things a further question: May not a contract not covered by the order and not previously confirmed by the court be a proper subject of judicial ratification or confirmation upon presentation of a petition for such purpose at any time before the fund has been disposed of?

The lease was executed in December, 1886. It operated to transfer at its date the entire estate described in its granting clause. Hence that estate, a term of years expiring in 1891, fell into the assets which Cooley turned over to McNulta, his successor (21), and which McNulta afterwards, June 20, 1889, was ordered to turn over to the puchasing committee upon their purchase previously made. It appears that the committee had bought, and applied for the delivery of "the property in "the possession of NcNulta as receiver, all the railway "and other property of every kind and nature of which "the said John McNulta is receiver in this cause." It seems necessary to conclude that the purchasing committee had bid in the unexpired leasehold interest as a part of the total assets, that the receiver had realized its value and had "duly conveyed" it with the other property, and that at the date of the order of June 20, nothing of importance remained but to give the purchasing committee possession at an early day. The answer of the respondents, to the petition of appellant (92), shows that McNulta turned over to the purchasing committee July 1, 1889. It is impossible to see, in the light of these

facts, how McNulta could exercise any right to determine this lease after he had sold it and put the money into the fund.

Yet we find him on the 27th June, (75) when his only relation to the property consisted in the duty of delivery to its owners, announcing his intention to "surrender pos-"session" and to pay no rent after "the rental for July." In this notice, as in the answer, the claim is virtually implied that although the court has sold and conveyed the leasehold, the purchasers, by using the name of the court can hold as tenants under the lease as long as they please, and when they "have no further use for the premises" surrender and repudiate the lease as a claim upon the fund.

Upon the entire case it is submitted that the lease was within the original authority of the receiver; that if not, it was afterwards ratified by the course of the dealing in the case; that if not so ratified it was error in the court below not to ratify it upon the petition for its payment out of the fund.

Respectfully submitted.

GEO. L. PADDOCK,
Solicitor for Appellant.

H. T. GILBERT,
of Counsel.

Office Supreme Court U. S.
FILED.
MAR 28 1894
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1893.

No. 345.

THE CHICAGO DEPOSIT VAULT COMPANY,
APPELLANT,

vs.

JOHN McNULTA, RECEIVER, THE WABASH WESTERN RAILWAY COMPANY, JAMES F. JOY, O. D. ASHLEY, THOMAS H. HUBBARD, EDGAR T. WELLES AND THE WABASH RAILWAY COMPANY, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF AND ARGUMENT FOR APPELLEES.

WELLS H. BLODGETT,
Attorney for Appellees.

Nixon-Jones Printing Co., 215 Pine St., St. Louis, Mo.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1893.

THE CHICAGO DEPOSIT VAULT COMPANY,
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vs.

JOHN McNULTA, RECEIVER, THE WABASH WESTERN RAILWAY COMPANY, JAMES F. JOY, O. D. ASHLEY, THOMAS H. HUBBARD, EDGAR T. WELLES AND THE WABASH RAILWAY COMPANY,
APPELLEES.

STATEMENT, POINTS AND BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

Upon a bill filed by Charles H. Beers in the Circuit Court of the United States, for the northern district of Illinois, for the foreclosure of a mortgage on the Chicago division of the Wabash, St.

Louis and Pacific Railway, the court on the 16th day of December, 1886, appointed Thomas M. Cooley receiver of all the mortgaged property. The order appointing the receiver contained, among other things, the following:—

> "And the said receiver is hereby empowered and instructed to take possession of all the said property decribed in said mortgage or appurtenant thereto, and to manage, control and operate the said railroad described in said mortgage, preserve and protect all said property and collect, as far as possible, all assets, choses in action, and credits due to said company, acting in all things under the orders of this court. * * * Said receiver shall also have authority subject to the supervision of the court to make such repairs to said railway and property as are necessary in his judgment, for carrying on the business thereof. And also to make all contracts that may be necessary in carrying on the business of said railroad, *subject to the supervision of this court.*"

In pursuance of that order, Judge Cooley took possession of the mortgaged railroad, and on the 31st day of December, 1886, he entered into the lease which forms the subject of this controversy. By that instrument, the Chicago Deposit Vault Company leased to Thomas M. Cooley, as receiver of the Wabash, St. Louis and Pacific Railroad Company, certain rooms in the Rialto Building in the city of Chicago, for a period of four years and four months, or until May 1st, 1891, at a rental of ten thousand, five hundred dollars per annum. By the

terms of the lease, the rental was to be paid by the receiver monthly in advance, in sums of eight hundred and seventy-five dollars on the first day of each month. The rooms in question were occupied by Judge Cooley, and he paid the stipulated rental until April, 1887, when he resigned his trust, and John McNulta was duly appointed as his successor. McNulta then continued to occupy the premises and pay the stipulated rental until he was finally relieved and ordered to turn over the mortgaged railroad to the purchasers thereof at foreclosure sale.

On the 20th day of June, 1887, the court entered an order (printed record, p. 31) directing that on or before July 1st, 1889, McNulta should turn over all the property in his possession, as receiver, to James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles; the order reciting that the parties last aforesaid had purchased said property at foreclosure sale, and received proper deeds of conveyance for the same. Afterwards, on the 27th day of June, 1889, McNulta, as receiver, gave notice to the Chicago Deposit Vault Company (printed record, p. 34), that he would not need the rooms in question after August 1st, 1889, and that on the 31st day of July, 1889, he would surrender possession of the premises to the lessor. The notice so given was in words and figures as follows:—

"To the Chicago Deposit Vault Company,
Chicago, Ill.:

I hereby respectfully notify you, as I have already heretofore verbally notified you, that from

and after the 1st day of August next, I shall not need the rooms in the Rialto Building, being numbers 523 to 547 inclusive, on the fifth floor, and the west half of the south wing on the seventh floor, now occupied as Wabash Railway offices by me, as receiver, and I shall cease to use said offices and shall surrender possession thereof to you on the 31st day of July next. No rental for said offices or any of them will be paid by me after that date, but the rental for July will be paid in the usual course of payment.

JOHN MCNULTA,
as receiver of railway property formerly belonging to the Wabash, St. Louis & Pacific Railway Company and now called for convenience, the 'Wabash Railway.' "

The rent was all paid to July 31, 1889, and thereupon McNulta, in pursuance of the foregoing notice, surrendered possession of the premises to the lessor.

There is no dispute with respect to the following propositions: —

1st. It is not even contended by intervenor that the court ever approved the lease, or had any knowledge of its existence prior to the filing of the intervening petition to recover this rental which accrued after the premises were vacated.

2d. It is not contended by intervenor that the parties to the suit, or the purchasers of the railroad at foreclosure sale had any knowledge of the lease until after the sale was made.

3d. It is shown by the record, and conceded by both parties, that the receivers, Cooley and McNulta, filed reports from time to time in which they showed monthly disbursements of the agreed rental, and that those disbursements were carried under the head of "Rent of General Offices," and that the reports so made were duly approved by the court without objections from any party.

The Prayer of the Petition.

On the foregoing facts, the intervenor prayed the court for an order directing the receivers and the purchasers at foreclosure sale, to abide by and perform said lease, and that an adequate fund out of said assets be retained in said court to assure the payment of the rents thereafter to accrue, and that said receiver be directed, out of said fund, to pay said rents, etc.

Petition Dismissed.

Upon the hearing (printed record, p. 74) it was ordered, adjudged and decreed that the intervening petition be dismissed and that each party pay one-half the costs of the proceeding.

POINTS.

1. It was properly held by the Circuit Court that the order appointing the receiver was not broad enough, in its terms, to authorize him to enter into the lease.

2. It was properly found as a fact by the Circuit Court that the lease in question was never reported to or affirmed by the court.

3. It was properly held by the Circuit Court that the filing of reports by the receivers, showing monthly disbursements on account of "Rent of General Offices" and the subsequent approval of said reports, were not such a confirmation of the lease as concluded the court.

4. It was properly held by the Circuit Court that any contract entered into by the receiver, which was not authorized by the order of appointment, or subsequently confirmed by the court, ended with a termination of the trust.

BRIEF.

I.

The lease was an improvident one, and not being previously authorized, or subsequently approved by the court, it did not bind the trust.

The points in this controversy are so clearly stated in the opinion of the Circuit Court that we need add but little in support of them.

It is not even contended by intervenor that the lease in question was ever reported to or approved by the court, nor is it contended that the parties to the suit, or the purchasers at the sale, had any knowledge of its existence prior to the time the sale was made. The case, therefore, mainly turns upon the question of whether the original order was broad enough in its terms to authorize the receiver to make the lease in question. We do not contend that receivers, charged with the operation of railroads, may not, under a very general sort of order, make contracts for the payment of office rent, or for the employment of such labor, or for the purchase of such supplies *as may be necessary to maintain the property during the receivership*. And we agree that all such contracts when fairly made, should be approved and enforced by the court, even though there might be some

doubt as to whether they were authorized by the original order of appointment. The cases cited by appellant in its brief seem quite sufficient to establish that proposition, and we are not prepared to say those cases were not properly decided.

What we contend for is, that an order appointing a receiver over a railroad and authorizing him, as was done in this case, to make all contracts that might be necessary in carrying on the business of said railroad, *subject to the approval of the court*, should not be so construed as to authorize the receiver to enter into agreements *without the knowledge or subsequent approval of the court*, which will bind the receivership funds and require their disbursement for rents, or for labor and supplies, to be performed or furnished *long after the trust has been terminated and the receiver discharged*. There is no hardship in requiring a party dealing with a receiver to look to the source of his authority, and, had the Chicago Deposit Vault Company done so in this case, it would have seen that under the order of his appointment, the approval of the court was expressly required, in order to make valid any contracts entered into by the receiver, with respect to the property placed in his custody.

The general rule with respect to matters of this kind does not seem to be in doubt. Mr. Beach, in his work on Receivers (Beach on Receivers, 1st Ed., Sec. 257) states it as follows:—

"But a receiver is not allowed to exercise his discretion in applying the funds in his hands. These

he holds strictly subject to the direction of the court, and only to be disposed of upon its order. *Neither can he enter into contracts without the approval of the court.* Although, as receiver, he may enter into negotiations and make such agreements as would be binding upon him as an individual, yet, *in order to affect the fund in his hands, his acts must be ratified by the court.* This rule is so well established that it has been decided that all persons contracting with a receiver are chargeable with knowledge of his inability to contract, and enter into contracts with him at their peril, and that the court has unquestioned power to modify or even vacate his agreements."

In *High on Receivers* (2nd Ed., Sec. 186) the rule is stated as follows:—

"Since a receiver is an officer of the court, and all contracts made with him are subject to ratification by the court, it has the undoubted power to vacate or modify any agreement or contract which the receiver has made, and to direct the making of another agreement; but it will not exercise such power without notice and without hearing the contracting parties. *And since a receiver has no power to make contracts without the authority of the court, all persons contracting with him are chargeable with knowledge of his functions in this regard, and contract at their peril.*"

So in *Union Trust Company* v. *Midland Company* (117 U. S., p. 434) it appeared that a receiver of a railroad had, without any previous authority, borrowed money to pay the expenses of the receiv-

ership, and to discharge bills for supplies, repairs and pay rolls, and repay moneys that had been so applied; and as the money had been used for the benefit of the trust estate the creditors claimed a superior lien upon the trust fund, but their claim was held subordinate to the mortgages and in passing on the point this court (p. 479) then said:—

"We are of opinion that this item cannot be allowed priority, for the reason that the borrowing of the money for which the notes were given *was not sanctioned in advance by the court.* Though made up of amounts not, perhaps, large in themselves, the aggregate cannot be called small; and there never could be any difficulty in obtaining an order of the court, if one were proper, to borrow money to a specified total amount, for specific purposes."

If the foregoing authorities may be relied upon as stating the correct rule with respect to the powers of receivers, then the lease in question was not a valid contract, unless it can be said that an order authorizing a receiver to enter into contracts *with the approval of the court*, should be so construed as to make his contracts equally binding on the trust, whether made with or without its previous knowledge or subsequent sanction. The circuit court did not so construe its order and its judgment in that respect seems to have been correct.

II.

The claim of intervenor for rental, during the unexpired term of the lease is not based on a legal contract, or supported by any equitable principle.

The lease was not valid as a contract, because it was not previously authorized, or subsequently approved by the court and intervenor has no equitable claim, because its rent has been fully paid up to the time the premises were vacated. It would seem palpably unjust to put the burden of this rental, at the rate of $875 per month, for the unexpired term of twenty-one months, on the purchasers when they had no use for the premises or knowledge of the lease at the time of the sale.

If a receiver, without the approval of the court or knowledge of the parties, can contract for the payment of rent for two or five years after his discharge, then he may in like manner contract for material to be delivered, or for labor to be performed, in two or five, or even ten years thereafter. Under such a rule no court could tell from its record what obligations were resting on the property it was selling; and, on the other hand, no purchaser would know what obligations he was assuming as a bidder at the sale.

The reason for requiring receivers to report their contracts to the court, is to advise it of what is being done, and give the parties to the suit an opportun-

ity to protect their rights. When the contract of a receiver, which may become a burden on the property, or perhaps displace prior liens, is brought before the court for its approval, the parties to the suit may then object, or they may even except and appeal from the order of approval.

That they may do so was decided in the case of *Farmers' Loan & Trust Company*, petitioner (129 U. S. 206), in which case it was held that the parties might appeal from an order entered in the Circuit Court authorizing the receivers to issue certificates which were to become a first lien on the property. On that point the court (page 214) said:—

"It is a decree fixing upon the property on which the trust company now have a first lien, another lien of $120,000, making it paramount to that. It changes the relation of that company to this property, displaces its rights as settled by a decree now pending in this court, and if that decree is affirmed it in effect modifies it, although this court may say that it should stand and be enforced. This order comes within all the elements of finality which we can imagine to belong to a decree of the Circuit Court. It establishes certain rights of the parties to the injury, as petitioners believe, of their interests in the property. * * * All we have to say upon this subject is, that if it be an authority vested in the judges of the Circuit Court, it must be exercised and governed by the principles of a judicial discretion, and the very point to be decided upon an appeal here is, whether they had such discretion and whether they exercised it in a manner that cannot be reviewed in this court."

The court then held that the appeal was properly prosecuted.

So any contract to pay certificates, or rental, from the trust fund, when approved by the court, is in the nature of a final decree, and if the parties to the suit make no objections to it, there is then no injustice in enforcing it against them, or against the purchasers, because the former might have objected to, and appealed from the order, and the latter are bound to take notice of the record, and their bidding at the sale should be governed by the fact that they take the property with its burdens.

But it is against the policy of the law and the whole theory governing the administration of trusts, to permit receivers, or others sustaining like relations, to make secret contracts, displacing liens and embarrassing the fund without the knowledge of the court, and without giving the parties to the suit an opportunity even to enter a protest.

And this lease having been made for a period of four years and four months (and amounting for whole period to the sum of $18,375) without previous authority or subsequent approval of the court, there is no hardship *in reading into it* a clause to the effect, that it was to continue for four years and four months *if the receivership should so long continue.* That is the way the lease should be construed, and in so construing it no hardship is imposed upon the lessor, for it, and the receiver, had it in their power to bring the lease to the attention of the court, at any time, and ask for an order confirming it for the whole period, and if such an order had been entered

without objection from the parties in interest, it could then be said, in fairness, that they, and the purchasers, were bound by its provisions. But that is not this case.

In this case the Chicago Deposit Vault Company knew, or was bound to know, the extent of the receiver's authority. It knew that the receiver could make no binding contract without the sanction of the court, and there is, therefore, no hardship in leaving the lessor without a valid lease, because it never took the steps necessary to make it a valid one.

III.

The reports filed by the receiver showing monthly disbursements on account of "rent of general offices," committed no one to the lease, because they advised no one of its existence.

When parties capable of contracting, with full knowledge of all the facts, so act as to induce others to believe they approve or acquiesce in contracts or arrangements made by agents or receivers, it is often inequitable to permit them to afterwards deny the validity and binding force of the arrangements to which they could and should have made prompt objections. But that principle has no proper application here. The reports in question only advised the parties of the fact that the receiver was paying a monthly rental for his general offices and to that no one objected or now objects.

If the parties to the foreclosure suit were now here objecting to the accounts of the receiver on the ground that he had no right to pay out monthly sums for office rent while he was in possession of the receivership property, it might well be said, and the court might well hold, that as they were all fully advised by the monthly reports that such payments were being made, their objections come too late. We concede the justice of that rule when applied to matters fully disclosed in the reports, but the rule is only to be invoked where the parties against whom the estoppel is urged have failed to act after they knew, or have had ample opportunity for knowing, the whole truth.

Therefore, as there is nothing stated in the reports, or found elsewhere in the record, tending to show that the parties to the foreclosure suit, or purchasers at the sale, knew of the lease, there can be no ground on which to predicate an estoppel. The decree of the Circuit Court was, therefore, right and it should be affirmed.

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